

State of Case. and Appellants brief submitted  
at the March Term as ~73

## New Jersey Court of Errors and Appeals

JAMES A. SCHWALL,  
Plaintiff-Respondent,

v.

THE DELAWARE, LACKAWANNA &  
WESTERN RAILROAD COMPANY,  
Defendant-Appellant.

Action at Law  
On Appeal.

### **BRIEF OF RESPONDENT.**

#### **Statement.**

This action was brought by the plaintiff, James Schwall, against the defendant, Delaware, Lackawanna & Western Railroad Company for damages for personal injuries sustained by him to his right foot, which deprived him of the use of his said foot, and resulted in permanent injuries. The circumstances of the accident were as follows:

The defendant railroad company having a tank on one of their gondola cars, in their railroad yards at Harrison, N. J., consigned to the Edison Lamp Works at Harrison, N. J., notified the consignees of the arrival of said consignment, Exhibit D-1, page 150 of the State of Case, and further notified them that the said car was subject to demurrage unless removed.

The Edison Lamp Works in turn notified Duckworth Crawford Company, a trucking concern, who were the employers of the plaintiff to

get the tank for them, and in accordance with such instructions, Duckworth Crawford Company sent a gang of men to the Delaware, Lackawanna & Western Railroad Company yards at Harrison (one of which was the plaintiff) with a truck to remove the tank. The men arrived and notified the railroad company that they were sent to remove this tank, and a yard clerk was sent to get a drill engine to remove the other cars on the track so that the truck could be backed to the car and tank rolled off the end of the car to the truck. In the meanwhile the gang of men got into the car and prepared the tank for removal. During this process the foreman of the gang, a Mr. Brown, sent the plaintiff to lower the end door and plaintiff proceeded to the end of the car to lower the door, and when about three feet from the door, it suddenly fell on him, causing injuries for which he brought his action. There were no hinges on the door of the car and it was improperly and insecurely fastened.

#### **POINT I.**

**The injury was caused through the negligence and carelessness of the defendant.**

The plaintiff based his action on Paragraph 5 of his complaint, which read (p. 7, fols. 19 to 29 of the State of the Case):

“5. That the said injuries were caused through the negligence of the said Delaware, Lackawanna & Western Railroad Company, in using a freight car known as a gondola freight car which was in a defective and negligent condition and that the door of the said freight car through which the plaintiff and other employees of the Duckworth Crawford Company were obliged to

remove the said tank, was in a defective and destroyed condition, in that the hinges on said door were in a defective and deteriorated condition."

Again, Paragraph 6 of the complaint says (p. 7, fols. 30 to 34, State of Case):

"6. That the plaintiff while lawfully in said car, and while endeavoring to remove said tank, was injured by the door of said car falling upon him as aforementioned, by reason of its negligent condition."

It will be seen from these two paragraphs of the plaintiff's complaint, that the charges of negligence against defendant were, the negligent and defective condition of the car and the defective condition of the door in that it had no hinges or that they were defective and deteriorated.

The evidence in the case was that in addition to the fact that there were no hinges, the door was insecurely fastened (p. 22, fol. 23, State of Case).

In this class of cases it is the duty of a carrier when it invites a consignee to its yards or upon its property or property under its control, to remove a consignment from its car to see that such car is safe for all persons who by invitation or by necessity are obliged to enter upon the same; that is, to exercise a reasonable inspection and to inspect it from every angle so that such person will not be injured. The invitation of the carrier to the consignee or those in his employ, to receive the lading of such car, imposes the duty upon such carrier to see that the car and its approaches are reasonably safe, and the consignee and his employees have a right to expect that such car is reasonably safe for

them to enter, and perform the necessary functions to remove such lading, and to assume that a reasonable inspection had been made so as to insure their safety.

In support of this contention, the case of *Ladd v. New York, New Haven & Hartford Railroad Company*, 193 Mass., 359 (9 L. R. A., p. 857), is directly in point and the rule in that case was adopted by the Trial Court in its charge to the jury (p. 138, fol. 16, State of Case):

“A railroad company which undertakes to deliver freight to the consignee from the car in which it is transported is bound to exercise ordinary care to have the car safe for those who properly resort to it to receive the property \* \* \* and it is immaterial that the car in fact is the property of another corporation.”

And in the case of *Tateman v. Chicago, R. I. & P. R. Co.*, 96 Mo. App., 448; 70 So. W., 54:

A railroad company receiving a loaded car from another line was held liable for the injuries incurred by a servant of a consignee, who in accordance with his usual custom went to the defendant's yard to examine the goods, and while opening the car door, was injured by the falling of the door on account of insufficient hinges. The Court said that it is the duty of a railroad receiving cars from another road for transportation to see that they are reasonably safe for those who are required to go upon them; and the question as to whether the railroad had made a proper inspection was one of fact for the jury.

The Court in his charge to the jury lays considerable stress to the matter of inspection, he refers to the testimony (p. 140, fol. 39, State of Case), as follows:

"At one o'clock Mr. Lypin says he found one of those missing and one on the floor. Why was it that one of those was missing?"

The Trial Court in this instance made reference to the testimony of Mr. Lypin, page 110, folio 30, State of Case:

"Q. Where were those staples as you call them originally in place, on the outside of the car or the inside of the car? A. On the inside of the car.

"Q. On the inside of the car? A. Yes, sir.

"Q. One staple was on the floor? A. Yes, sir.

"Q. And one missing? A. One missing."

This witness was a car inspector employed by the defendant company on the date of the injury to plaintiff. On page 110, State of Case, folio 6:

"Q. You say that the latches on the outside were in good condition? A. Yes, sir.

"Q. Now, had you seen that car before that day? A. Yes, sir.

"Q. When had you seen it? A. I seen that car at ten minutes to seven" (p. 110, fol. 14, State of Case).

"Q. And what was the occasion of you seeing the car at that time? A. Well, when I seen the car, the door was up; the car was loaded, some machinery in it; the door was alright, the latches was on. Of course, *I never look inside of the car* when the car is going to be unloaded."

An explanation of how the hinges or staples in question are placed when in proper position, as explained by defendant's car inspector on page 112, State of the Case, folio 19:

"Q. How many staples were there? A. Two.

"Q. Where were they put? A. They are connected with door and go through the

floor, and two nuts goes right underneath the sills.

“Q. How do they connect with the door?

A. The door has got two straps, right from the top of the door to the bottom, the bottom of the door.

“Q. On what, on the door, or on the side of the car? A. On the door. ‘Then the staple goes right through the eye of that strap, through the floor to the bottom.’

“Q. And how is the door detached from the floor? A. With those staples.

“Q. That is the way it is attached. Now, how do you get it loose? A. The only way you could get it loose, is to get the nuts off underneath the car and pull them up.”

All of which tends to the conclusion of fact reached by the jury that the car was not properly inspected; that the superficial inspection made at ten minutes to seven on the morning of the injury to plaintiff, was carelessly and improperly made and was pregnant with that lack of ordinary and reasonable care which imputes negligence in the defendant, and a disregard for the ordinary safety of plaintiff who was then and there placed in a position of danger upon the invitation and request of the defendant.

A proper inspection, not careless, would have brought home to the defendant, the fact that the door in question was not fastened and safeguarded in the manner intended by the designer and builder of the car. Surely the inside hinges and the outside latches together were intended to constitute a complete fastening for said door, and therefore, if either the hinges or latches were not secure, then the door was not securely and properly fastened, and if the defendant railroad company was under any duty or obligation at all to use ordinary care to protect against injuries likely to result from a de-

fective fastening of said door, then the failure of its inspector to seek for and find apparent defect, raises more than an ordinary presumption of negligence.

What caused the door to fall?

In the absence of testimony showing that some outside agency just at the moment or immediately prior to the time that the door fell, caused it to fall, compiled with the fact that it did fall, and that some part of the fastening and equipment of the car was defective or improperly secured, breeds the presumption that the cause of its falling was the broken hinges or no hinges, or latches, not fastened; all due to the lack of ordinary care on part of defendant, by proper inspection to discover the deficiency and to remedy the condition before inviting or permitting the plaintiff to enter upon the zone of danger.

It is submitted that no matter what agency (except only the negligence of fellow workmen of plaintiff of which there is no proof) might have caused the outside fastenings to have been unlatched at the time of the door falling, the duty of the defendant to see that all parts of the car were secure, relegated itself to a time immediately prior to the accident, and not to a day, an hour, or other intervals before the happening of the injury.

The superficial outside inspection was made around seven o'clock in the morning; the door fell around nine o'clock, two hours later, and there is no evidence in the case that any of the fellow servants of plaintiff, in any manner, touched said door or its fastenings before it fell except the testimony adduced by defendant's witness Reed, the improbability and utter fallacy

of which was undoubtedly entirely disregarded by the jury, which is manifest from the Trial Court's comment and direction thereon. See page 136, State of Case, fol. 13.

"It is evident that, unless you reject Arthur Reed's account of this occurrence, your verdict must be for the defendant. I say that unless you reject Arthur Reed's account the verdict must be for the defendant, for, if his statement is correct or if the jury deems his account to be as probable as the case made by the plaintiff, then the plaintiff's case fails, because, according to Arthur Reed, the fall of the door was proximately and immediately due to the employees of the Edison Lamp Company, these five men, or some of them,—if not to their negligence, at any rate to their conduct—and not proximately and immediately due to any act of the Delaware, Lackawanna & Western Railroad Company or its employees. *Therefore it is necessary to consider Mr. Reed's story, because if he is right, this suit cannot be maintained.*"

It is respectfully submitted that three questions of fact arose: all of which are quoted at length in the charge of the Trial Court, State of Case, page 139, folio 16.

"First: Were the hinges in fact defective?  
Secondly: If they were, did that defect in the hinges occasion the fall of the door?  
Thirdly: If this is so, was the danger of it falling from that cause one which the Delaware, Lackawanna & Western Railroad Company in the exercise of ordinary care or inspection, should have discovered and, having discovered, should have prevented?  
Unless you say yes, to all these propositions, you cannot render a verdict for the plaintiff. If you resolve, then, in the affirmative, if you do say yes to them, and put the accident as a result upon the condition of the

hinges as the cause and find under the evidence no other cause co-operating or operating to produce that result, then the plaintiff's case is made out."

The defendant in its brief on page 10, folio 17, *et seq.*, urges that the car was in possession of the consignee, Edison Lamp Company and that the respondent-plaintiff was there at the invitation of said company, and cites the cases of *Standard C. & C. v. Penn. R. R. Co.*, 88 N. J. L., 257; *Burr v. Adams Exp. Co.*, 71 N. J. L., 263; and *Buchant v. B. & M. R. R. Co.*, 73 N. E., 642.

An inspection of these cases will, at once show a complete absence of support of the point raised, and as having no bearing whatsoever on the case at bar. The case of *Louis v. N. Y. O. & W. Ry. Co.*, 210 N. Y., 429, cited and quoted by the defendant in its brief, page 11, Point 3, is not a case analogous to the case at bar, that case resolved upon the question of loading a car and not upon a question of defects in the car itself; on page 432 of said case the rule followed is to the effect that a railroad is under no duty toward a consignee to establish a system of inspection in order to guard against the *consequences of careless loading by the shipper*.

The case aforementioned cannot be accepted as a basis of comparison to the points involved in the case at bar.

Referring to the case of *K., C., M. & O. Ry. Co. v. Pysher*, 195 S. W., 981, cited and quoted by defendant in Point 4, defendant's brief, page 13, folio 6, wherein defendant alleges similarity between said case and the case at bar.

Upon examination of the case cited, we find as follows: That plaintiff in that case was injured when opening the door of a closed car,

which was shipped through various carriers until it reached the defendant railroad company, as ultimate carriers, and was delivered to the employers of the plaintiff. The car was loaded with a lot of Ford automobiles and *the door was sealed*. The plaintiff broke the seal of door and proceeded to open it, when a loose casting from the top of the door fell upon him. The Court said on page 983 of the Reporter:

“We cannot see why the ultimate carrier *should owe the duty to a consignee to break seals* of the shipper of a car, and go inside and make an inspection of a car, where there is nothing on the outside of the car to indicate a defect in the car itself, on the inside, or the manner of its loading, from an inspection of the car for transportation. Certainly a railroad company cannot be held liable to consignees or their servants, except for its own negligence or the negligence of preceding carriers of which it knows or should know by ordinary inspection.”

On page 984, of the Reporter, at bottom of opinion, the Court further said:

“The simple fact that appellant failed to inspect the car, would not make appellant liable. It is the failure to inspect, where an inspection would, or should discover the defect.”

This case differs from the case at bar, in that the car in the case cited, was a closed car with the door sealed, while the car in suit was an open box car and easily accessible for inspection, whereby all defects in the car itself might readily have been discovered by ordinary inspection.

We do not question the ruling of the cited

case, as being applicable to *closed cars sealed*, but we do contradistinguish and challenge any doctrine when applied to the case of an open box car, *not sealed*, where the opportunity to enter such open car for purposes of inspection is within the province and scope of the duty owing by a carrier to the consignee or its servants when it invites them to unload from such car in its yard.

In the case of *Sykes v. St. Louis S. F. Ry. Co.*, 178 Mo., 693, 77 S. W., 723, the Court in its opinion, said:

“When a car is loaded for a through shipment, and must pass over one or more connecting roads before it finally comes into the possession of the ultimate carrier for delivery, to the consignee, it is the duty of the ultimate carrier before delivering it to examine it and ascertain whether it is in such a state of repair that the servants of the consignee while exercising reasonable care themselves, can enter upon it with reasonable safety of unloading it and if it is not in such a condition, it is the duty of the railroad to make the necessary repairs or to notify the consignee of the unsafe condition of the car so that the consignee can warn his servants before they enter upon it.”

This case as well also as the case following, are both allied in their respective rulings with the Ladd case referred to in the charge of the Trial Court to the jury (State of Case, p. 138, fol. 16).

In the case of *Tatemen v. Chicago, R. I. & P. Railroad Co.*, 70 S. W., page 514, last above referred to, the Court, on page 515 of the Reporter, said:

“It has been and is ruled in this State [Missouri], that it is the duty of the railroad company to inspect its cars, even

though received from other companies to see that they are reasonably safe for those who are required to go about them. And our holding is that taking this case in its entirety, as it is shown to be by the evidence, the question of the defendant's proper inspection of a car, and the nature of the inspection were matters for the jury and were properly submitted."

Sweeney *v.* Old Colony R. R. Company,  
10 Allen, 368 (1865).

### SUMMARY.

It is respectfully submitted that the judgment should be affirmed for the following reasons:

First.—Because the jury found that the defendant was negligent in not making a proper inspection of the car upon which plaintiff was invited by defendant, so as to disclose the defects and insecure condition of the door of said car.

Second.—Because the question of proper inspection was one of fact for the jury.

Third.—Because the question whether or not the injuries were caused by an act of fellow workmen of plaintiff was one for the jury, and the finding of the jury indicates that defendant's sole testimony touching on the fellow workmen question adduced by the defendant's witness Reed, was disbelieved by them, and the right to so disregard said testimony was clearly within the province of the jury.

Fourth.—Because the evidence in the case shows that it was a question of fact for the jury to determine whether or not there was a

defect in the appliances and in the fastenings of the door, and also whether the defendant by proper inspection should have discovered such defects, which questions of fact presented solely a jury question, and were properly determined by the jury.

Fifth.—Because no error was committed by the Trial Court in its charge to the jury.

Respectfully submitted,

POMEREHNE & LAIBLE,  
Attorneys of Plaintiff-Respondent.



## New Jersey Court of Errors and Appeals.

JAMES SCHWALL,	}	Action at Law. <b>10</b> On Appeal.
<i>Respondent,</i>		
<i>vs.</i>		
THE DELAWARE, LACKAWANNA AND WESTERN RAILROAD COMPANY,		
<i>Appellant.</i>		

### **BRIEF OF APPELLANT.**

#### **Statement.**

This appeal brings up for review a judgment rendered in the Essex Circuit of the Supreme Court, entered upon the verdict of a jury in an action for personal injuries. **20**

The circumstances surrounding and giving rise to the action were as follows:

On August 24, 1916, Carlisle & Hammond Co. loaded and shipped from Wason Street, Cleveland, Ohio, on the lines of the Pennsylvania Railroad Company, a smelting furnace and its accessories—designated by the testimony in this case variously as a tank or machinery—and weighing 10,280 lbs., to the Edison Lamp Works, at Harrison, N. J., located on the lines of the appellant (Exhibit D-2, p. 152). **30**

Loaded in P. L. car 853,159, the shipment was delivered to the appellant at Buffalo, N. Y. (p. 85, l. 9), and carried by it to Harrison, N. J., where, on August 30, 1916, two days before the accident, it was placed on one of appellant's public team delivery tracks (p. 76, l. 25, et seq.), and the **40**

Edison Lamp Works notified in writing that said shipment was tendered them for delivery (Exhibit D-1, p. 150; p. 81, l. 24, et seq.), it being the duty, under the Official Classification filed with the Interstate Commerce Commission, at Washington, D. C., under which said shipment moved, of the Edison Lamp Works to unload said shipment (Exhibit D-5, p. 155, and p. 77, l. 10, et seq.).

10 On August 31, 1916, the Edison Lamp Works called upon Duckworth & Crawford, truckers and riggers, and employers of respondent, to send one of their men down to said car for the purpose of looking over said machinery so that it could be taken out of the car and to the Edison Company's plant (p. 60, l. 21 et seq.).

20 In his complaint the respondent alleges that he was sent down to the yard of the appellant to remove the shipment in question from the car and that, while lawfully in the appellant's yard and upon said car, he was injured by the falling of a door of said car, the hinges of which were in a defective and deteriorated condition.

That no confusion result in a proper determination of what actually was proved to have been the cause of the accident and what was alleged to have caused it, a brief description of the car and its construction and the door and its appliances, is not out of order.

30 The car itself was what is known as a gondola car, shown by the photographic exhibits P-1, p. 148, P-2, p. 149, and D-3 and D-4, at pages 153 and 154.

40 These cars are so constructed as to allow each end, known as a gate, p. 124, l. 40, or door, p. 125, l. 1, to be let down or lowered in and upon the floor of the car, p. 125, l. 4, so that machinery, or whatever load it may be carrying, could be slid or taken out on rollers, p. 31, l. 14. An illustration of the operation of the door can be gained by an

examination of the photographic exhibits at the end of the printed record.

A technical description is given of the construction of the door by the witness Reed, p. 122, l. 23, et seq., and p. 125, l. 19, et seq., but it suffices our purpose to call this Court's particular attention to two sets of appliances connected therewith.

One set of appliances is described throughout the case as "I" or "U-bolts".

Called U-bolts because they are shaped like the letter U, these bolts are the hinges which the plaintiff in his complaint claims were defective and were the cause of the injury to him (p. 40, l. 7, et seq.).

Exhibit D-3, p. 153, shows their approximate location on the door, although, when the door is in an upright position, they are located underneath it (p. 17, l. 7, et seq.).

These bolts pass through the floor of the car to a sub-sill, under the car, where nuts are applied to hold them (p. 122, l. 6, et seq.).

The use and purposes of these U-bolts were to prevent the loss or misplacement of what would otherwise be a loose end of the car (p. 122, l. 7, et seq.; p. 121, l. 22, et seq.); their absence, however, in no way interfered with the lading or prevented the safe running of the car (p. 124, l. 18, et seq.), because the door which, in itself, was close-fitting to the end of the car (p. 109, l. 34 et seq.), was held in place by latches or clasps on the outside of it, as plainly shown by Exhibit P-1, p. 148.

When the door of the car was in an upright position, both by reason of the fact that the U-bolts were underneath it (p. 17, l. 7, and the construction of the car (p. 125, l. 33, et seq. and Exhibit P-1, p. 148) it was impossible to see them from the outside of the car (p. 31, l. 37, et seq.).

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The respondent, a railroad man of experience (p. 24, l. 15, et seq.), knew and recognized the difference between the I or U-bolts described in the complaint as hinges, and the clasps on the outside of the door (p. 17, l. 10, et seq.).

10 On September 1, 1916, two days after the car had been tendered to the Edison Company and one day after their truckers had inspected the machinery for the purpose of unloading, the respondent, with four others of the rigging crew, arrived with their truck at the car for the purpose of unloading it; they all boarded the car over its side, paid no attention as to whether the end door was properly caught on the outside or not, and forthwith proceeded to take the crating off the machinery and get ready to jack it up, preparatory to sliding it out of the easterly end of the car.

20 After working some time, the respondent was ordered by his foreman to go down to the end of the car and release the locks on the door (p. 23, l. 30, et seq.).

30 There was no claim or charge made throughout the case that the locks or clasps on the outside of the door were in any but perfect condition, and the proof was that at ten minutes of seven, about an hour and a half before the accident happened, the locks were in their proper position on the door for the purpose of holding it up (p. 110, l. 10, et seq.).

Whether any of the respondent's fellow-workmen tampered with said locks before the accident does not appear with the exception of the respondent's fellow-servant, but appellant's witness, Reed, who testified he unlatched the locks and caused the accident (p. 96, l. 4, et seq.), but whose testimony the jury evidently disbelieved, thus rendering it necessary for us to point out the errors at the trial of said cause.

40 That the accident to the respondent did not hap-

pen on account of the defective hinges was the respondent's own proof and admission, for he testified that if the door had been properly locked on the outside, the door would not have fallen down (p. 38, l. 9, et seq.).

The respondent's description of the accident, while improbable, showed that, after working a while on the machinery, he was ordered down to release the locks on the outside of the end door; that there was a clear space of about fifteen feet from the end of the machinery to the car door, that he proceeded down toward the door, nobody being in front of him or at the end near the car door; that there was no vibration of the car caused either by his fellow-servants working in the car or by any agent of the appellant, and that, when he got within reach of the swing of the door, it fell in upon, and injured him, the door as it fell coming in the regular way such doors were designed to be dropped on car floors.

The appellant's evidence, when heard, in no way strengthened the respondent's case.

It was uncontradicted that when a car from another road or what has been designated as a foreign car, was received, by railroads generally, and the appellant in particular, the receiving road inspected them to insure their being safe for movement over the line, safe for trainmen and safe for the lading which they were designed to carry, and to protect the receiving road from defects for which the receiving road was not responsible (p. 23, l. 29, et seq.).

It was also proved that the absence of hinges, or U-bolts, on end door, the latches or outside locks on said door being in good order, did not make a door unsafe for movement over a carrier's road; neither was it unsafe for railroad employees or the lading of the car (p. 120, l. 23, et seq.; p. 124, l. 18, et seq.).

Although all the evidence produced upon the part of the respondent was to the effect that the accident to him could not have occurred if the outside clasps or locks had been fastened at the time he approached the end door, thus positively negating the charge in his complaint that the defective hinges on the end door of the car-door were in any way responsible for the accident, the trial court refused to direct a verdict for the appellant and left to the jury for its determination (a) whether the defective hinges occasioned the fall of the door; (b), whether the danger of the falling of the door by reason of the defective hinges was a matter which the appellant, by exercise of ordinary care, should have discovered and prevented.

## ARGUMENT.

### POINT I.

**The negligence charged was *not* the cause of the accident.**

Grounds of Appeal No. 1.

The Court's attention is first directed to the charge of negligence made against the appellant.

The respondent's complaint, alleged that the injury occurred by reason of "the door of said car falling upon him as aforesaid by reason of its negligent condition" (p. 7, l. 11, et seq.), which condition, the preceding paragraph of the complaint states, was that the door "was in a defective and destroyed condition, in that the hinges on said door were in a defective and deteriorated condition" (p. 7, l. 27, et seq.).

The trial court, too, recognized that "It is not anything about the latches on the outside; it is something about the hinges in the inside" (p. 137, l. 9, et seq.).

While it may be conceded that the hinges or U-bolts of the end door were defective at the time of the accident, an examination of the respondent's testimony—which is the only testimony in the case upon which the trial court could assume to predicate a possible liability, will show conclusively that the accident did not happen on account of the negligence charged against the appellant, but because the door was not, to use the respondent's words, "properly locked".

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This we see by his testimony:

"Q. Do you know what caused this door to fall? A. No, sir.

"Q. What would prevent that door from falling? A. *Well, if it had been properly locked on the outside, it would have never come down.*"

"Q. You mean those two—A. Clamps.

"Q. These two catches that you were speaking of before? A. Yes, sir." (Page 22, l. 16, et seq.)

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"Q. These doors, when they operate properly, they open in on the car floor, do they not? A. Yes, sir.

"Q. And when this door came in on you, it fell in the proper manner, didn't it? A. Yes, sir." (Page 33, l. 9, et seq.)

"Q. But when it did fall on your leg, it fell like a door would fall if it had been hinged properly in the car, or let down properly in the car? A. Yes, sir." (Page 37, l. 5, et seq.)

"Q. And as you have told the court this morning, in anticipation of what you thought I desired, and as you told the court yesterday—you said if the door had been properly latched on the outside, it would not have fallen down? A. Yes, sir." (Page 37, l. 10, et seq.)

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"Q. Well, was there anything else the matter with the door? A. It wasn't properly locked.

"Q. Outside of the properly locked, I mean inside of the car. A. No, sir." (Page 39, ll. 20-24.)

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“Q. Being naturally loose after it was unlatched, it would naturally fall inside on the floor of the car? A. Yes, sir.” (Page 51, ll. 11-13.)

The defect, if, for the sake of the argument, it can be called a defect, *that the door was not properly latched on the outside* was not charged against the appellant in the respondent's complaint, was not considered by the court as a ground of negligence, and was not submitted to the jury for its determination. (P. 137, l. 10, et seq.; p. 139, l. 17, et seq.; p. 141, l. 17, et seq.)

Thus, at the end of the entire case, there was a total failure of proof of negligence on the part of the appellant.

The allegata and probata in no way corresponded.

True, the court submitted to the jury the question as to whether the appellant was negligent in not making a reasonable inspection, but he limited that consideration, not to a failure to inspect the locks or latches on the outside of the door, for, concededly, they were in good order; neither did he consider as a submissible question for the jury's consideration whether there was a failure on the appellant's part to inspect the car for the purpose of ascertaining whether the latches on the outside of the door were properly latched; he left to them only the question of the appellant's failure to ascertain the condition of the hinges on the inside of the car, a matter which the evidence uncontradictedly and plenary established had nothing to do with the accident.

The requested verdict should have been directed.

*Case v. Erie R.R. Co.*, 59 N. J. L., 471;  
*Jordan v. Reed*, 77 N. J. L., 592.

**POINT II.****Liability, if any, rested on the Edison Lamp Works, and not the appellant.**

Grounds of Appeal, Nos. 1, 2, 8, 9 and 10.

Under the Official Classification, filed with the Interstate Commerce Commission (Exhibit D-5, p. 155), the Edison Lamp Works was under the duty of unloading the shipment from the car in question. Theirs was the only shipment in the car (p. 77, l. 21, et seq.); the shipment was both heavy and bulky, weighing 10,280 pounds (p. 151, Exhibit D-2), required five men from Duckworth & Crawford Company to unload (p. 61, l. 10 et seq.), and was such that it could not be handled by the appellant's station employees (p. 77, l. 18 et seq.), and was destined to a station where the carrier's unloading facilities were not sufficient for handling it (p. 77, l. 18 et seq.).

The car was placed on the appellant's public team track for delivery on August 30, 1916 (p. 76, l. 29, et seq.), and at 9 A. M. of the same day the Edison Lamp Works was tendered said car and notified that the appellant held it subject to its orders or disposition (Exhibit D-1, p. 150; p. 81, l. 20, et seq.).

It further appeared that the day before the accident, which happened on September 1, 1916, Duckworth & Crawford's trucks and riggers, at the instance and direction of the Edison Lamp Works, inspected the machinery in said car so as to arrange to take it out and take it to the plant of the Edison Lamp Works (p. 60, l. 17, et seq.), and that on September 1, 1916, the day after said inspection, and, in pursuance of the said instructions from the Edison Lamp Works, the respondent, an employee of Duckworth & Crawford, while

preparing to take the machinery out of said car, was injured.

It was urged upon the trial court that the car had been delivered to the Edison Company; that the respondent was in said car by the invitation of the Edison Company; that there was no relation between the appellant and the respondent upon which liability could have been predicated—all without avail.

10

Vide:

Request for direction of verdict, p. 120, l. 27, et seq.;

Exceptions to charge, p. 143, l. 14, et seq.;

Requests to charge, p. 144, l. 29, et seq.

That said car was in the possession of the Edison Company, and that the respondent was there at the invitation of said company, under the facts in this case, is apparent.

20

*Standard C. & C. Co. v. Penn. R.R. Co.*,  
88 N. J. L., 257.

*Burr v. Adams Express Co.*, 71 N. J. L.,  
263;

*Bachant v. B. & M. R.R. Co.*, 73 N. E.,  
642.

The control of the car having changed, it being held subject to the orders and disposition of the Edison Company (Exhibit D-1, p. 150, l. 21, et seq.), the liability of the railroad company for the defects had ceased.

30

*Glynn v. C. R.*, 175 Mass., 510; 56 N. E.,  
698.

40

### POINT III.

**The duty of the appellant was that of transportation only, and that had been completed before respondent was injured.**

Grounds of Appeal Nos. 1, 4, 5 and 7.

What was recently said in *Lewis v. N. Y., O & W. Ry. Co.*, 210 N. Y., 429, we think applies to the case at bar. In that case, the servant of a consignee was injured by some bales of hay loaded in a car falling upon him when he opened the door of the car.

10

“The defendant did not load the car. That was done by the shipper.” (See Exhibit D-5, p. 155.) “To charge the defendant with liability, we must, therefore, be prepared to hold that after the car had been loaded and closed by the consignor, the defendant was under a duty to inspect the contents in order to protect the consignee”—page 431.

20

“If the consignee undertakes to unload the car, which is switched for convenience on a side track in his yard, the carrier’s function ends and delivery is complete when the car is thus placed in the custody of the consignee. In this case the consignee assumed the work of unloading as his own. He had no reason to believe that the work of loading at the other end of the road had been done by the railroad, and the fact is, as we have seen, that it had been done by the consignor. It was through the consignor that the contract of carriage had been made, and the consignee, in accepting the shipment, adopted the contract thus made in his behalf. Indeed, the defendant’s tariff schedules, filed with the Interstate Commerce Commission and Public Service Commission, show that ‘bulk freight will not be taken in less than carloads’ and that ‘owners will be required to load and unload freight in carloads when carried at carload rates.’ Both consignor and consignee

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40

must, therefore, be taken to have understood that the defendant's contract was confined to the transportation of a car, to be loaded by the consignor at one end of the route and unloaded by the consignee at the other.

*"In these circumstances, we think that the defendant was under no duty toward the consignee to establish a system of inspection in order to guard against the consequences of careless loading by the shipper."*—Page 432.

10

"We think that in such a case as this, the carrier's duty toward the consignee is merely one of transportation.

"A car is received by it, completely packed, which it undertakes to haul to a stated destination, and when it has done that, its duty ends. To hold that a carrier impliedly undertakes to inspect, for the consignee's protection, all cars that come into its custody, no matter where loaded, or by whom, would be to impose an unjust burden."—Pages 432-433.

20

*"The car was securely closed; it was properly constructed; the transit was completed in safety; for the injury that resulted to the consignee's employee, after the car had passed into the consignee's possession, the defendant is not liable."*—Page 433.

#### POINT IV.

**The respondent, as ultimate carrier of the car in question, was not liable for a defect not discoverable by an inspection of the outside of the car.**

30

Grounds of Appeal, Nos. 1, 2, 3, 4, 5, 7, 11, 12, 13 and 14.

40

The uncontradicted evidence in the case showed that the shipment originated at Cleveland, Ohio, on the Pennsylvania Railroad; that it was delivered to the appellant at Buffalo, N. Y., for transportation to Harrison, N. J.; that the only defect in the car was the deteriorated hinges inside of the car, and that the same could not have been

discovered from an inspection from the outside of the car, and that the said defects in no wise endangered the safety of railroad employees in the loading of said car.

The facts in the instant case are quite similar to those in *K. C. & M. & O. Ry. Co. v. Pysher*, 195 S. W., 981, where it appeared that the plaintiff was injured in opening the door of a car by a loose piece of casting which should have been securely fastened. 10

The car in question was a foreign car, loaded off the line of defendant.

The defect which caused the injury was a hidden defect concealed in the inside of the car, not discoverable by ordinary inspection for the running condition of the car, but only discoverable by an inspection inside of said car.

In the case cited, the court said:

“The judgment of the court in this case has no support except upon the failure of the appellant to perform the duty, if it was a duty, to examine the inside condition of the car to ascertain whether the casting over the door of the car, and a part of the car itself, was in a reasonably safe condition for unloading the car when delivered to the consignee.”—Page 983. 20

After reviewing the authorities, it said:

“The duty of the appellant on receiving the car extended only to ‘a reasonable inspection of its condition with reference to its fitness for transportation’ and, in view of the evidence offered showing that the defect was not observable from the outside of the car, and the fact that the defect did not in any way affect the movement of the car, we are of opinion that the peremptory instruction requested should have been given. \* \* \* 30

“The simple fact that the appellant failed to inspect the car would not make the appellant liable.”—Page 984. 40

To like effect is the case of *G. W. T. & P. Ry. v. Whitnebert*, 108 S. W., 150, where the court said:

10 "The judgment in this case has no support except upon the failure of the railroad company to examine into the manner in which the car was loaded to ascertain whether the safety valve had been set so as to make it safe for any person who might unload the car when it was delivered to the consignee. It was the duty of the railroad company, upon receiving the tank car, to make a reasonable inspection of its condition with reference to its fitness for transportation, but we have been unable to find any authority which goes to the extent of holding that it was the duty of the railroad company, under such facts, to inspect the manner of loading the car so as to ascertain whether the freight was so arranged as to be safe to persons who might be called upon to remove it from the car."

20 The facts upon which the foregoing opinion was predicated were that, to discover the alleged defect in the car, the inspector of the carrier would have been required to go upon the top of the oil tank of the car, unscrew the cap from the dome, and test the valve, to ascertain whether it was properly set.

30 The trial court in the instant case conceived that the law, as laid down in *Ladd v. N. Y., N. H. & H. R.R. Co.*, 193 Mass., 539; 79 N. E., 742, was applicable to the facts, and charged the jury accordingly.

We contend, however, that the rule of law there laid down is and was inapplicable for several reasons.

40 First: The trial court failed to appreciate the fact that the shipment in question was an interstate one, moving under a filed Official Classification (Exhibit D-5, p. 155), the terms of which, with respect to the method and manner of loading, was a part of the contract for the trans-

portation of the shipment, adopted by the consignee in accepting said shipment, and the status of the car in the instant case accordingly was not similar to the car in the *Ladd* case because appellant did not, as in the case cited, use the car as its temporary freight-house.

This distinction is a valid one, as filed tariffs and classifications are part of the details so fully and completely covered by the Interstate Commerce Act.

10

*U. S. v. N. W. Co. & O. R. N. Co.*, 159 Fed., 975;

*G. C. & S. F. R. Co. v. Hefley*, 158 U. S., 98;

*N. Y., N. H. & H. R.R. Co. v. I. C. C.*, 200 U. S., 361;

*Adams Express Co. v. Croninger*, 226 U. S. 491;

*N. Y. & H. R.R. Co. v. G. E. Co.*, 83 Misc. (N. Y.), 529. 20

Secondly: That the appellant was obliged to receive the car in which the shipment moved, from the Pennsylvania Railroad at Buffalo, N. Y., it being in safe condition for transportation.

Interstate Commerce Act, Sec. 3, 24 Stat. 379 (U. S. Comp. St., 1901, p. 3154).

Thirdly: That there was proof that the defect could not have been discovered by reasonable inspection. 30

Fourthly: That the court in the *Ladd* case expressed no opinion on the duty of inspection of the car.

Fifthly: That in the case cited there was evidence that the jury might have found that the railroad company had had sufficient opportunity to discover and remedy, or guard against the defect there found, while in the instant case, the evidence was uncontradictedly just the reverse. 40

**POINT V.**

**For the reasons herein stated, it is respectfully urged that the judgment be reversed.**

Respectfully submitted,  
FREDERIC B. SCOTT,  
Attorney of Appellant.

**10**

**20**

**30**

**40**

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**Grounds of Appeal.**

(Filed Feb. 26, 1918.)

**NEW JERSEY COURT OF ERRORS AND APPEALS.**

10

JAMES A. SCHWALL,  
*Plaintiff-Respondent,*  
 vs.  
 THE DELAWARE, LACKAWANNA AND  
 WESTERN RAILROAD COMPANY,  
*Defendant-Appellant.*

Action  
 at Law.

20 The above appellant, The Delaware, Lackawanna and Western Railroad Company, herewith sets down its grounds of appeal in the above entitled cause:

1. That the Trial Court refused to direct a verdict in favor of the defendant and against the plaintiff for the four reasons stated to said Trial Court, and which more fully appear in the record of said cause.
- 30 2. Because the Trial Court in its charge to the jury in said cause allowed the said jury to assume and find for the purpose of the determination of said action that the said plaintiff-respondent was lawfully in the car in which he was injured at the time and place of the accident at and by the invitation of the defendant-appellant.
3. That the Trial Court improperly charged the jury on the trial of said action with respect to the rule as to the inspection of said car by the defendant-appellant, which rule of law, the said Trial Court stated, was the rule of law laid down in the Massachusetts case of *Ladd v. N. Y. N. H.*

## Grounds of Appeal.

& *H. RR. Co.*, 193 Mass., 359, and from the opinion in which case the said Trial Court, in its charge to the jury, quoted at length.

4. Because the Trial Court charged the jury that the obligation is "to exercise ordinary care to have the car safe for those who properly resort to it to receive the property, and it is immaterial that the car in fact is the property of another corporation." 10

5. Because the Trial Court, in charging the jury with respect to the defect in the hinges of the car door in question, occasioning the fall of the door, charged the jury as follows: "If this is so, was the danger of it falling from that cause one which The Delaware, Lackawanna and Western Railroad Company, in the exercise of ordinary care by inspection, should have discovered, and, having discovered, should have prevented?" 20

6. Because the Trial Court charged the jury, with respect to plaintiff, that "he has been an efficient workman, even with that disability, and now, with this added injury to his right leg, it is evident, of course, not that he is incapable of earning something—and a man is bound to minimize his injury and loss by doing whatever he can—but that his earning power is, no doubt, impaired." 30

7. Because the Trial Court refused to charge the defendant-appellant's Request No. 1, which read as follows:

"(1) In this case the railroad company's duty to the consignee, the Edison Company, was one merely of transportation. The car involved in this suit was received by it loaded and it undertook, to haul it to a stated destination; having done that, its duty to the Edison Company and the plaintiff, who may be considered its agent, ended, and in view 40

**Grounds of Appeal.**

of the fact that the injury to the plaintiff did not occur during the transportation of the car, your verdict must be for the defendant company."

8. Because the Trial Court refused to charge the defendant-appellant's Request No. 2, which read as follows:

10

"(2) I charge you that the car involved in this suit was at the time of the accident in possession of the Edison Company, and that it was the Edison Company, not the railroad company, that invited the plaintiff to go upon the car involved, and for the injury to the plaintiff the Edison Company may be, but the Railroad is not liable."

9. Because the Trial Court refused to charge the defendant-appellant's Request No. 3, which read as follows:

20

"(3) If you believe there was no arrangement or agreement or obligation on the part of the railroad company to unload the car involved in question, then its duty to the Edison Company ended when it placed said car on its public delivery for delivery, and it owed no duty or obligation to plaintiff, as the plaintiff was invited to board it by the Edison Company, not the defendant."

30 10. Because the Trial Court refused to charge the defendant-appellant's Request No. 4, which read as follows:

"(4) I charge you that the Edison Company at and at least for an appreciable length of time prior to the accident to the plaintiff was in possession of the car on which this accident happened, and that for an accident happening to the plaintiff under such circumstances there can be no recovery."

40 11. Because the Trial Court refused to charge the defendant-appellant's Request No. 5, which read as follows:

## Grounds of Appeal.

“(5) Even though you should believe that the proximate cause of the accident was due to the alleged defective hinges on the car door, I still charge you that your verdict must be for the railroad company, because it is uncontradicted that the alleged defective hinges were not observable from an inspection from the outside of car, for the defendant could only be held liable for a defect discoverable by such an inspection of the car as it was under a duty or obligation to do with respect to or for the safety of its employees in transporting said car over its line.” 10

12. Because the Trial Court refused to charge the defendant-appellant's Request No. 6, which read as follows:

“(6) The defendant railroad company was under no duty or obligation to inspect the inside or interior of the car in question either when it received it or when it placed it on its delivery track for delivery to the Edison Company.” 20

13. Because the Trial Court refused to charge the defendant-appellant's Request No. 8, which read as follows:

“(8) For any defect in the interior or inside of the car in question not discoverable by a proper inspection from the outside of the car, in any way contributing to the fall of the door, the defendant company is not liable.” 30

14. Because the Trial Court refused to charge the defendant-appellant's Request No. 9, which read as follows:

“(9) The uncontradicted evidence is that the door of the car was properly latched a short time prior to the accident, and in view of that fact you cannot find the defendant company liable, even should you believe the plaintiff's story that he was injured because said door was unlatched and also because 40

said hinges on said door were defective, because the defendant was under no obligation or duty to watch or guard against said door latches being unlatched, and there being no proof that said doors were unlatched by any one connected with or employed by the defendant company."

FREDERIC B. SCOTT,  
Attorney of Defendant-Appellant.

10

**Judgment Record.**

**NEW JERSEY SUPREME COURT.**

ESSEX COUNTY.

<p style="text-align: center;">JAMES A. SCHWALL, <i>vs.</i> THE DELAWARE, LACKAWANNA AND WESTERN RAILROAD COMPANY,</p>	}	<p>Action at Law. On Postea. George P. Laible, Attorney.</p>
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Delaware, Lackawanna & Western Railroad Company, the defendant in this cause, was summoned to answer unto James A. Schwall, the plaintiff therein, in an action at law, upon the following complaint:

(Summons issued June 23, 1917.)

The plaintiff, residing at No. 31 Blum Street, in the City of Newark, County of Essex and State of New Jersey, complaining of the defendant,

30

says:

1. That the defendant, on the first day of September, 1916, was a corporation and common carriers of freight and passengers by railroad in the State of New Jersey.

2. On said date the plaintiff was employed by Duckworth-Crawford Company, a corporation, as a laborer.

40

## Judgment Record.

3. That on said day he was sent by his employer to the freight yards of the Delaware Lackawanna & Western Railroad Company at Fourth Street, in the Town of Harrison, County of Hudson, and State of New Jersey to remove a tank from one of the freight cars attached to a freight train in said yards which the said Delaware, Lackawanna & Western Railroad Company had transported to said place. 10

4. That while the said plaintiff was lawfully in the said yards and on said car to unload and remove the said tank from said car, he was injured by the door of said car falling upon him, severely and permanently injuring his right foot causing a compound fracture of the bones of the ankle.

5. That the said injuries were caused through the negligence of the said Delaware, Lackawanna & Western Railroad Company in using a freight car known as a gondola freight car, which was in a defective and negligent condition, and that the door of the said freight car through which the plaintiff and other employees of the Duckworth-Crawford Company were obliged to remove the said tank, was in a defective and destroyed condition, in that hinges on said door were in a defective and deteriorated condition. 20

6. That the plaintiff while lawfully in said car, and while endeavoring to remove the said tank was injured by the door of said car falling upon him as aforementioned by reason of its negligent condition. 30

7. By reason of the aforesaid negligence the plaintiff has suffered great pain and in the future will suffer great pain and has been permanently injured in that he has lost the use of said right foot and that he has been deprived of his weekly 40

earnings and has lost large and divers profits by not being able to attend to his usual vocations, and in the future will be deprived of his weekly earning and profits by reason of the aforesaid accident.

8. That the plaintiff was compelled to expend large sums of money in and about being cured of his said injuries as aforesaid.

10 Wherefore, the plaintiff demands judgment against the defendant, Delaware Lackawanna and Western Railroad Company in the sum of \$25,000.00.

GEORGE P. LAIBLE,  
Attorney of Plaintiff.

### Answer.

(Filed July 2, 1917.)

20 The defendant, The Delaware, Lackawanna and Western Railroad Company, answering the allegations contained in the plaintiff's amended complaint filed in the above entitled action, says:

FIRST: It admits the allegations contained in the first paragraph of the plaintiff's amended complaint.

30 SECOND: It has no knowledge or information sufficient to form a belief so as to answer the allegations contained in the second paragraph of the plaintiff's amended complaint.

THIRD: It has no knowledge or information sufficient to form a belief so as to answer the allegations contained in the third paragraph of the plaintiff's amended complaint.

FOURTH: It denies the allegations contained in the fourth paragraph of the plaintiff's amended complaint.

FIFTH: It denies the allegations contained in

## Answer.

the fifth paragraph of the plaintiff's amended complaint.

SIXTH: It denies the allegations contained in the sixth paragraph of the plaintiff's amended complaint.

SEVENTH: It denies the allegations contained in the seventh paragraph of the plaintiff's amended complaint.

10

EIGHTH: It denies the allegations contained in the eighth paragraph of the plaintiff's amended complaint.

And for a first separate and distinct defense, this defendant says:

That the plaintiff was guilty of contributory negligence in that he failed to exercise reasonable care and prudence in and about the work which he was doing at the time he was injured as complained of, thereby causing said injury to himself.

20

And for a second separate and distinct defense, this defendant says:

That the plaintiff ought not to have or maintain his action against it because the said injuries to the said plaintiff were caused by the acts of other persons not connected with or employed by this defendant and over whom this defendant had no control, and on account of whose acts this defendant had no notice or reason to anticipate that said persons' acts would cause the injury to the plaintiff complained of in his amended complaint.

30

Wherefore, this defendant prays that the above action be dismissed as to it, with its taxed costs.

FREDERIC B. SCOTT,  
Attorney of Defendant.

40

**Reply.**

(Filed July 9, 1917.)

The plaintiff replying to the answer of the defendant says:

1. He repeats all the allegations of the complaint in reply to the answer of the defendant.
2. He denies the allegations of the first and second separate and distinct defenses to the answer.

GEORGE P. LAIBLE,  
Attorney of Plaintiff.

**Judgment.**

This case was tried before Judge Frederic Adams with a jury, to whom it had been referred by a Justice of the Supreme Court, holding the Circuit at Essex County, on January 10th, 1918.

The jury rendered a general verdict against the defendant and in favor of the plaintiff in the sum of two thousand six hundred and seventy six dollars (\$2,676.00).

Dated January 14th, 1918.

	Whereupon it is adjudged that the plaintiff recover of the defendant, the
\$2,676.00	sum of two thousand six hundred and
49.74	seventy six dollars, and his costs,
30 —————	which are taxed at the sum of forty
\$2,725.74	nine dollars and seventy four cents,
	making in the whole the sum of two
	thousand seven hundred and twenty
	five dollars and seventy four cents.

Judgment entered January 15, 1918.

WM. S. GUMMERE, C.J.

**Testimony.****NEW JERSEY SUPREME COURT.**

ESSEX CIRCUIT.

Tuesday, January 8, 1918.

<p style="text-align: center;">JAMES A. SCHWALL,</p> <p style="text-align: center;"><i>vs.</i></p> <p style="text-align: center;">DELAWARE, LACKAWANNA &amp; WEST- ERN RAILROAD COMPANY.</p>	}	<p>Action at Law.</p>	<p>10</p>
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Before :

HON. FREDERIC ADAMS, J., and a Jury.

For plaintiff appear MESSRS. POMEREHNE &amp; LAIBLE.

For defendant appears FREDERIC B. SCOTT, ESQ.

A jury is called and sworn.

MR. LAIBLE opens for plaintiff.

MR. SCOTT opens for defendant.

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JAMES A. SCHWALL, plaintiff sworn in his own behalf.

DIRECT EXAMINATION BY MR. LAIBLE:

Q. Mr. Schwall, where do you live? A. 31 Blum street.

Q. That is in Newark, is it? A. Yes.

Q. How old are you? A. Forty-three.

Q. You are the plaintiff in this case? A. Yes, sir.

Q. Where were you employed on or about September 1, 1916? A. By the Duckworth-Crawford Company.

Q. As what? A. As a helper in a rigging crew.

James Schwall—Direct.

Q. Now, where were you employed, in what particular place, on September 1, 1916? A. Well, there were instructions from the boss to go down to this car at the D. L. & W.

Q. Where was that car? A. In the Harrison freight yards.

Q. Of the D. L. & W. Railroad? A. Yes, sir.

10 Q. When you say "the boss" whom do you mean? A. Mr. Duckworth.

Q. Of the Duckworth-Crawford Company? A. Yes, sir.

Q. And he told you to go down to the D. L. & W. freight yards to this car? A. Yes, sir.

Q. What was in this car? A. Well, it contained a tank.

20 Q. What kind of a tank? A. Well, a tank you could use for all purposes, steam or air. Of course, I couldn't say what—

Q. Well, a heavy iron tank, was it? A. Yes, sir; about five tons.

BY THE COURT:

Q. I understand, Mr. Schwall, that you were in the employ of a corporation known as the Duckworth-Crawford Company; is that right? A. Yes, sir.

30 Q. And that Mr. Duckworth told you to go down to the Harrison freight yards? A. Yes, sir.

BY MR. LAIBLE:

Q. Who else was with you on that day? A. Mr. Brown, Mr. Baldy there, and Mr. Reed.

BY THE COURT:

Q. What is Mr. Brown's first name, do you know? A. William Brown.

40 Q. And the other man, what is his name? A. I believe they call him Baldy.

James Schwall—Direct.

Q. That is not Brown? A. No, that is the second one.

Q. What is his real name? A. That I couldn't say. He is out on the seat there (indicating).

Q. Well, we will call him Baldy for the present. Any one else? A. A man by the name of Mr. Reed.

Q. Those three men were with you? A. Yes, sir. **10**

BY MR. LAIBLE:

Q. Was there anybody else there? A. Well, there was several others, but I don't know their names.

Q. Well, how many in all? A. Five.

Q. Five including Mr. Brown? A. Yes, sir.

Q. Who was the foreman? A. Mr. Brown.

Q. And he had charge of the five men? A. Yes, sir. **20**

Q. Now, when you got to the D. L. & W. Railroad yard what did you do? What did Mr. Brown and the men do? A. We drove up alongside of the car and put our materials off of the truck into the car, in order to get it ready to unload, and one of the yard clerks came down, and he went down to get the engine, in order to pull these cars away from this car where we had our machinery in, to give us room to put our truck in over the track and to back in lengthways. **30**

BY THE COURT:

Q. Let me see if I understand that. You had a wagon, I suppose? A. Yes, sir; a truck.

Q. A motor truck? A. No, sir; team.

Q. How many horses? A. Three horses.

Q. Tandem? A. No, sir.

Q. Side by side? A. Yes, sir.

Q. And you put your materials in the car, you say? A. Yes, sir. **40**

James Schwall—Direct.

Q. And then they came down on a truck? A. No, one of the yard men came down and went forward to get the engine to have these cars disconnected from this other car, the one that we were to unload.

Q. How many cars were there in that train, do you know? A. Well I should judge about ten or twelve.

10 Q. And the yard man— A. Went to get the crew—

Q. —undertook to get these other cars taken out of the way and your car disconnected? A. Yes, sir.

BY MR. LAIBLE:

Q. Did the engine come down and take the other cars away? A. Not while we was there.

20 Q. Well, what did the men do then, including yourself? A. Well, we got our rigging up, got our crowbars and hammers, and started to loosen the blocking around this piece of machinery.

BY THE COURT:

Q. What was it you got out? A. Blocking, hammers and sledges and stuff to release the blocks.

Q. That was in the car? A. Yes, sir.

30 Q. Was it a closed car or an open car? A. It was an open car, an open gondola.

Q. What kind of a car is a gondola? A. Well, some gondolas has one board, some has two and some has three and some has boards on the sides.

BY MR. LAIBLE:

Q. That is, it is a flat car with sort of a box around it? A. Yes, sir.

40 Q. What people in general call a box car, is it not?

James Schwall—Direct.

THE COURT: Well, a box car means a car with a roof, does it not?

WITNESS: A box car is a roofed car.

Q. Is that the kind of car it was (two photographs shown to witness)? A. Yes, sir; that is what we call a gondola.

(The photographs referred to are offered in evidence, by consent, and marked respectively Ex. P-1 and Ex. P-2.) 10

Q. That is the open car that figures in this picture, not these closed cars? A. No, sir; the open car.

Q. The ends of the cars are what is known as doors, are they not? A. Yes, sir.

Q. And you were inside, together with the other four men, and started to rig up this boiler or tank; is that right? A. Yes, sir. 20

THE COURT: I think you had better let the witness tell what happened.

Q. Well, now, after that what did you do? A. I and the others was told to go the end of the car, to let the car door down, so that we could get this piece of machinery out.

Q. Who told you that? A. Mr. Brown.

Q. And who went up there? A. Well, I couldn't just say whether it was Mr. Reed or Mr. Baldy there, or who it was. 30

Q. Well, who was ahead? A. I was.

Q. Did the three of you go together or did you go alone, or how was it? A. I walked up alone.

BY THE COURT:

Q. Who is Mr. Brahan? Have you mentioned him?

MR. LAIBLE: That is Baldy. 40

James Schwall—Direct.

Q. You said Mr. Brown and Baldy, and then Mr. Reed. Who was it that gave these orders, do you say, Mr. Brahan? A. Mr. Brown gave the orders.

Q. You were told by Mr. Brown to do what? A. To release this door on the end.

Q. This gondola car, was that at the end of these ten or twelve cars? A. No, sir.

10 Q. There were cars on each side of it, were there? A. Yes, sir.

THE COURT: Just find out what kind of a door this is, how it works, whether it is on a hinge, or what.

BY MR. LAIBLE:

Q. How does this door work that you speak about, Mr. Schwall? A. Well, for instance, this 20 is the end of the car here, this is the end of the car; this door here was hinged up; that holds it up; there is a hook on each side (indicating).

Q. It is held up by hooks? A. Yes, sir.

BY THE COURT:

Q. One on each side? A. Yes, sir.

Q. Suppose you just use this photograph. Does that show in this photograph, P-2 (shown to witness)? A. Yes, sir; right on this end that shows the door (indicating).

30 Q. One on each side? A. Yes, sir.

Q. Let me see if I understand you. One here at one end (indicating)? A. Yes, sir.

Q. And one here at the other end (indicating)? A. Yes, sir.

Q. Where is the hook? A. There is the hook there; this clamp slips over that; it drops over on the socket.

40 THE COURT: The jury, if they look at this,

James Schwall—Direct.

will see what the witness calls a clamp at each end, which he says goes over the hook.  
(Photograph shown to jury.)

BY MR. LAIBLE:

Q. What is inside underneath the door that holds the door in place there? A. Those are rings.

Q. What do you mean by rings? A. Floor rings, or socket rings, in order to hold the door from dropping in. 10

Q. How are they placed? A. Well, there is an I-bolt on each side.

Q. That is, one on the door? A. No, two on the floor and one on the door, one on each end of the door; they hold this here I-bolt.

BY THE COURT:

Q. These clamps are on the outside? A. Yes, sir. 20

Q. Are these rings on the inside? A. Yes, sir; there is a hook there and there is a hook there (indicating).

BY MR. LAIBLE:

Q. What do they call this (indicating)? A. Well, the same as they would call a hinge.

Q. And what fits in those two holes (indicating)? A. These bars of iron.

Q. I mean what fastens them together, the floor and the door? A. This locks on this here (indicating). 30

Q. Those locks are on the top? A. No, the locks are on the outside of the car.

Q. The locks are on the outside? A. Yes, sir.

Q. What catches them on the floor, what holds them there? A. There are supposed to be bolts going through the floor of the car.

Q. And does that fasten it together so that it works like a hinge? A. Yes, sir. 40

James Schwall—Direct.

Q. Now, when you walked up there did you see this door? Was it up? A. It was up in position.

Q. Up in position? A. Yes, sir.

Q. Did you see what the condition of it was? A. Well, as far as I could see and judge, I took it the door was held fast.

10 BY THE COURT:

Q. Which side did you look at it from? A. From the inside.

BY MR. LAIBLE:

Q. Did you see the hinges? A. No, sir.

Q. And as you walked up toward the door what happened? A. The door came in on me.

Q. How near to the door were you? A. Well, I should judge about from here going to about  
20 here (indicating). Well, about 3 feet.

THE COURT: There is an 18 inch rule (handing rule to witness).

WITNESS: Take it on an average, about 3 feet from the end of the car to the door.

BY THE COURT:

Q. I do not quite understand that. What is that distance? A. About 3 feet.

30 Q. That it from what? A. From the door to where it drops over into the car; when the door is released from these hooks it will drop in about 3 feet.

Q. The hooks were on the inside? A. Yes, sir.

Q. Then, I suppose, the door was about 3 feet high? A. Yes, sir.

BY MR. LAIBLE:

Q. You say it fell on you. What part of your  
40 body did it fall on? A. It fell on my right leg.

James Schwall—Direct.

It broke the leg in through here; it smashed this bone outside this way, and this bone was drove out that way (indicating).

THE COURT: The witness points to his leg just above the ankle.

WITNESS: Just right above the ankle, in the socket.

10

BY MR. LAIBLE:

Q. And was the door lying flat on the floor when it fell on you? A. Yes, sir.

Q. That is, after it fell? A. Yes, sir.

Q. And is that door heavy? A. Well, I should judge about five or six hundred pounds, probably more.

Q. It is a wooden door, bound with iron; is that it? A. Yes, sir.

Q. Where were you taken afterwards? A. To St. James's Hospital.

20

Q. How? A. By the Harrison police ambulance.

Q. How long were you at St. James's Hospital? A. Nine weeks.

Q. Well, where did you go after that? A. Well, after I got relieved from the hospital I went to my boarding-house, back home.

Q. Have you worked since then? A. No, sir.

Q. Did you work before then? A. Yes, sir.

30

Q. Where? A. Well, you mean before the accident?

Q. Yes. A. I worked for the Central Railroad.

Q. And you worked for the Duckworth-Crawford Company? A. Then I went with Duckworth & Crawford.

Q. How much were you getting as wages? A. I was getting \$15 a week at the Central Railroad and \$13.50 from the Duckworth Company.

40

James Schwall—Direct.

Q. How long did you work for the Central Railroad? A. Fifteen years.

Q. Did you ever have an accident before? A. No, sir; outside of when I was in the railroad service.

10 THE COURT: That is hardly a proper inquiry; it may lead us into an inquiry as to other transactions.

MR. LAIBLE: I want to show that the plaintiff has lost a leg in that accident, but was able to work with one good leg and—

WITNESS: My foot was taken off.

MR. LAIBLE: —with his other leg, the one that was hurt, and I want to show that now in his present condition he is unable to work with the artificial leg and his present leg.

20 THE COURT: I probably did not make myself clear. The question that ought not to have been asked was whether he had ever had any other accident. Suppose he said he did have one accident, but that he was not to blame. Then we should have to investigate that. So that I shall rule that question out.  
(Question withdrawn.)

30 Q. Did you ever sustain any other injury, Mr. Schwall? A. Well, through my career as a railroad man, I had the misfortune to lose my left leg.

Q. And what kind of an artificial leg have you got? A. Well, I have got—it was made by a firm in New York; it is rawhide and aluminum.

BY THE COURT:

40 Q. You mean that you had an artificial leg before this accident? A. Yes, sir; I did, your Honor.

James Schwall—Direct.

Q. Which leg? A. The left leg.

Q. Is that the foot that was hurt? A. No, sir; the right foot.

Q. You had an artificial leg of how much? A. Four inches below the knee.

Q. Taking in the foot? A. Yes, sir.

Q. You had an artificial foot and part of the leg? A. Yes, sir.

Q. For how many years? A. Twenty-two years!

Q. On the left limb? A. Yes, sir.

10

BY MR. LAIBLE:

Q. Now, Mr. Schwall, you worked steady with that artificial leg, did you not? A. Yes, sir.

Q. And what was your occupation on the Central Railroad? A. I was a crane runner, a yard man, a rigger, an all about man.

Q. And you had to be on your feet a good deal with that occupation? A. Yes, sir.

20

Q. And you could do it? A. Yes, sir.

Q. What has been your condition with relation to being on your feet since this last accident, on account of your right foot being injured through this door? A. Yes, sir.

Q. I say what has been your condition? Can you work? A. Yes, sir.

Q. Can you work since this last accident? (No response.)

30

BY THE COURT:

Q. The question is whether you can work since this last accident? A. No, sir.

BY MR. LAIBLE:

Q. Can you walk as good as you could before? A. No, sir.

Q. Can you walk without the assistance of a cane or anything? A. Not to a certain extent,

40

James Schwall—Direct.

no; I may walk from here to the end of the building.

Q. And what then? A. I would have to either sit down or fall back on the cane.

Q. You have to have a cane almost continuously with you? A. Yes, sir.

10 Q. Did you suffer much pain by reason of this injury? A. Yes, sir.

Q. Do you suffer much pain now? A. Yes, sir.

Q. When? A. Well, I continually have pain, the bones always being sore, not being knitted together.

Q. What doctor treated you? A. Dr. Mitchell.

Q. Do you know what caused this door to fall? A. No, sir.

Q. Well, if it had been in good condition, would it have fallen?

20

Objected to as leading.

THE COURT: That is a matter of opinion.  
(Question withdrawn.)

Q. What would prevent that door from falling?  
A. Well, if it had been properly locked on the outside it would never have come down.

Q. You mean those two— A. Clamps.

Q. Those two catches that you were speaking about before? A. Yes, sir.

30 Q. If they had been properly locked it would not have come down? A. No, sir.

Q. Did you notice whether this was a new car or an old car? A. Well, I couldn't say whether the car—it may have been on the road for ten or twelve years or five years or a month.

Q. I see. Whether conditions make it look older than it is. When this door fell in, Mr. Schwall, did you notice how it fell? A. It came in towards the inside.

40

Q. On its regular hinge? A. No, sir; there was no hinges.

James Schwall—Direct.

Q. How do you know there were no hinges? A. From the appearance of the door, when the door dropped, after me sitting there waiting for the ambulance to come; you could look over the door onto the floor of the car; there was nothing there to—

Q. Was it away from the place of the hinge?  
A. Yes, sir.

Q. How far away? A. Why, about three inches. **10**

Q. Three inches away from where the hinge would be if there had been one? A. Yes, sir.

Q. And you saw there was no hinge there? A. No, sir.

Q. Or nothing to catch the two together? A. Yes, sir.

Q. You say that was after the door had fallen and you were lying there? A. Yes, sir.

Q. Were there any men around there when it fell on you? A. Mr. Brown and Mr. Baldy were there. **20**

Q. Where were they? A. They were around the machinery.

Q. But at the place where the door fell on you, were there any men there? A. No, sir.

Q. The other men were all up by the— A. By the piece of machinery.

BY THE COURT:

Q. What were you doing there? A. I was going down to release the locks on the door, I and the other men. **30**

BY MR. LAIBLE:

Q. Where were you going to take this tank, or piece of machinery, that you speak of? If you had taken it away from there, where were you going to take it, do you know? A. To the General Electric. **40**

James Schwall—Cross.

Q. If this accident had not happened, would you have had to wait for the yardmaster to come back with the engine to remove the other cars before you could take the tank out? A. Yes, sir.

Q. Do you know who the yardmaster was connected with? A. I can't say.

10 Q. What railroad he was connected with? A. Why, the D., L. & W.

Q. How do you know that? A. Well, he came from the freight-house.

Q. He came from the D., L. & W. freight-house? A. Yes, sir.

JAMES A. SCHWALL, plaintiff:

CROSS EXAMINATION BY MR. SCOTT:

20 Q. How old are you, Mr. Schwall? A. Forty-three.

Q. And before you were employed by Duckworth & Crawford, you say, you worked for the Central Railroad? A. I worked for the Central Railroad before I went to Duckworth & Crawford.

Q. How long did you work for the Central Railroad? A. Fifteen years.

30 Q. What kind of work did you do with the Central Railroad, what specific kind of work? A. Well, I was a freight train man, a yard man, a rigger, all around handy man.

Q. You did not do any work in the freight-house, did you? A. No, sir.

Q. You were familiar before you went to Duckworth & Crawford with the difference between what is known in railroading as a box car and a gondola car, were you not? A. Yes, sir.

Q. And you were familiar with these gondola cars that had what they call end doors? A. Yes, sir.

James Schwall—Cross.

Q. On the morning in question what time did you get down to the Harrison freight-yard? A. Well, I couldn't give just the exact minute, but I could give in around between eight and nine o'clock.

Q. And you all came down in a wagon or truck?

A. Yes, sir.

Q. You five men? A. Yes, sir. **10**

Q. And you drove up— A. Alongside of the car.

Q. —alongside of the car? A. Yes, sir.

Q. Who directed you men to go up to where the car was? A. Why, I believe it was one of your representatives from the freight-house.

Q. Did you actually see someone direct you to where the car was? A. Mr. Brown got instructions about that.

Q. But, as far as your knowledge is concerned, you do not know how Mr. Brown came to know where the car was? A. Only through his talk. **20**

Q. You did not see anybody direct Mr. Brown to go to this car, did you? A. No, sir.

Q. Now, when you got up to the car you found it in what is known as the Harrison freight-yard? A. Yes, sir.

Q. And in that yard there are a number of public team delivery tracks? A. Yes, sir.

Q. How many? A. Well, I couldn't say.

Q. Four or five? A. Probably, more or less. **30**

Q. And this car was on one of those tracks? A. Yes, sir.

Q. Now, on each side of the track where the car that you were to unload was was there a passageway to drive up between the cars? A. Well, we could drive up to the car.

Q. You could drive up to the car? A. Yes, sir.

Q. How was that, a paved passageway, cobblestones, or what? A. Cobblestones.

Q. With cobbles on each side of the track? A. Yes, sir. **40**

James Schwall—Cross.

Q. With sufficient space for you to drive— A.  
To drive alongside.

Q. And you got up there to where this car was.  
You say that there were other cars on the track?

A. Yes, sir; ahead and back—forward and back,  
both.

Q. Back and forward of the car in question?

10 A. Yes, sir.

Q. Were they all attached or not? A. That  
I couldn't say, of course.

Q. But, as I recollect your testimony, you have  
told us there was not sufficient space at the end  
of the car in question for you to back up your  
wagon? A. No, sir.

Q. After you got there you men threw out your  
rigging tackle on the ground? A. Yes, sir.

Q. And then got off your wagon? A. Yes, sir.

20 Q. And proceeded to take the rigging into the  
car, did you not? A. Well, we drove up along-  
side of the car, took our rigging and put it in the  
car.

Q. You did not throw it down on the ground?  
A. No, sir.

Q. You took it directly from the wagon into  
the car? A. Over the side of the car from the  
wagon.

30 Q. This car was facing on a track which ran  
what you call east and west, toward Hoboken and  
Newark, did it not? A. Yes, sir.

Q. And the injury happened to you by the fall-  
ing of the door which was toward Hoboken, or  
the east end of the floor of the car? A. Yes, sir.

Q. Did you climb from your wagon right into  
the car? A. We got over the side of the wagon  
into the car.

Q. Into the car? A. Into the side of the car.

Q. All of you? A. Yes, sir.

40

James Schwall—Cross.

Q. Is that your present recollection? A. Yes sir.

Q. That each one of the five men— A. Went over the side of the car.

Q. —climbed over the side of the wagon right into the car? A. Yes, sir.

Q. And did you at any time before the accident look at the east end door of this gondola car in which you were subsequently injured? A. No, sir. 10

BY THE COURT:

Q. Speaking of yourself, you did not do it? A. No, sir.

BY MR. SCOTT:

Q. So that when you got in the car, you do not know the condition of the latches on the outside of the car which you have indicated on this photograph, P-1, as to whether those latches on the outside of the car were fastened or not (photograph shown to witness)? A. No, sir. 20

Q. You do not know whether they were fastened or not? A. No, sir.

Q. You didn't, at any time on the day in question, get outside of the car and examine it? A. No, sir.

Q. And prior to the accident you don't know whether they were latched or not? A. No, sir. 30

Q. Do you remember what the number of this car was? A. No, sir.

Q. Do you know whether it was a D. L. & W. car or whether it was a foreign car? A. It was a foreign car.

BY THE COURT:

Q. What kind of a car? A. The classification of the car, like Pennsylvania car or a D. L. & W. 40

James Schwall—Cross.

car or Michigan Central. They classify them all as foreign cars.

Q. By foreign car, you mean a car that from its markings showed that it was not a Lackawanna car? A. Yes, sir.

Q. Do you remember what car this was, what railroad? A. It was a Pennsylvania Railroad car.

10

Q. Now, you have told the jury, after looking at this Exhibit P-1, that the end of the car with respect to the latches was similar to the latches on the car that you were injured on? A. Yes, sir.

Q. And looking at that photograph a little bit more carefully could you tell us whether that photograph represents the kind and type of the end door of the car that you were injured on?

20

A. Yes, sir.

Q. Where did you learn, Mr. Schwall, that this was a Pennsylvania car? A. Well, anybody in the railroad business, men, anybody been around railroads for twenty-seven years, would certainly know the difference in the classification of cars.

Q. And you recognize that this was a Pennsylvania car? A. Yes, sir.

30

Q. When you climbed over the car, from your truck into the car, you say this tank, or whatever machinery it was in the car, will you tell us how that was placed in the car? A. It was placed in the center of the car.

Q. And was it fast or attached to the car in any way so that it wouldn't move about in the course of transportation? A. Yes, sir.

Q. Will you tell us how it was fastened? A. Well, it was what we call a blocking, so it wouldn't shift.

40

Q. It was boarded up and planked up in such

James Schwall—Cross.

a manner as to hold it in position— A. For safety riding.

Q. —for transportation? A. Yes, sir.

Q. About how long was this piece of machinery? A. About probably 8 or 10 feet.

Q. And about how high? A. About 6.

Q. About 6 feet high? A. Yes, sir.

Q. About how wide? A. About 5 or 6 feet wide. **10**

Q. And you say it was located right in the center of the car? A. Yes, sir.

Q. And all this boarding or arrangement to keep it from moving was placed around it? A. Yes, sir.

BY THE COURT:

Q. What kind of a machine was it? A. It was a tank, a boiler; something similar to a boiler. **20**

BY MR. SCOTT:

Q. At the time this accident happened to you there was no engine around? A. No, sir.

Q. And were there any employees of the company around at that time? A. Only one man at the end of the car, and he told Brown he was going out and get the drill engine to move some other cars to give Mr. Brown a show to back our wagon into the car over the track.

Q. He was going to have these other cars move so the space would be opened up? A. Yes, sir. **30**

Q. Where had he gone to before the accident? A. Who was that?

Q. This man that told Brown. A. He went down the yard.

Q. He went down the yard somewheres? A. Yes, sir.

Q. How long before the accident was it that **40**

James Schwall—Cross.

he had gone down the yard? A. Well, I judge probably four or five minutes; probably longer.

Q. Do you recollect just where he was— A. No, sir.

Q. —when he told Brown what he was going to do about going down the yard and get the engine? A. No, I could not.

10 Q. I mean, where was he standing? A. Where he was standing?

Q. Toward the side of the car some place? A. He was alongside of the truck.

Q. And was that before you got into the car at all? A. Yes, sir.

Q. And then before you got into the car this fellow went down in the yard somewhere? A. Went to look for the crew.

20 Q. I believe you have told us he was the only man you saw around there that morning that you knew or could identify as an employee of the railroad company? A. Yes.

Q. In unblocking or taking the blocking off this engine, this tank, whatever it was, what did you use—crowbars? A. Crowbars and sledgehammers and snapjacks.

30 Q. And in using those implements was there any motion? Did they move the car much? Was there any vibration? A. Well, not so much; not any more than necessary.

Q. I know, not any more than necessary, but I mean, did it? A. Well, that I couldn't say.

Q. You wouldn't say there was no vibration when they were working? A. There may have been some vibration on the car.

Q. You were not paying any particular attention as to whether there was any vibration produced by this work in unboarding the tank? A. No, sir.

40

James Schwall—Cross.

Q. How long did you work taking the boards away from the tank? A. I don't know; probably about three or four minutes; probably a little longer.

Q. After you got in the car? A. Yes, sir.

Q. And were all the other men working in the car at the tank? A. They were getting ready with their tools and stuff.

10

Q. The method, as I understand it, in getting this tank out of the car would have been to lower the door, lower this end door and then roll the tank out on rollers? A. Yes, sir.

Q. And had you reached that stage of your work when you get your rollers ready to put under the tank? A. No, sir.

Q. You had not? A. No, sir.

Q. You spoke about some hinges or staples—I forget just what you call them—inside of the car, inside of the car door, connecting the car door with the floor, and in this photograph P-2 you have pointed out what you designate as the hinges? A. Yes, sir.

20

Q. If you look at that photograph particularly you will note that there are two markings in pencil called A and B, with lead pencil markings going to the places where the hinges were? A. Supposed to be.

Q. Where they were supposed to be.

30

THE COURT: This is the inside view?

MR. SCOTT: Yes.

Q. Those lines so indicated indicate the places where the hinges, as you say, ought to have been? A. Yes, sir.

Q. Now, if that door was up, the car door was up like it is in this photograph P-2, looking at the car from the outside like in this photograph P-1, it would be impossible to see these hinges,

40

James Schwall—Cross.

wouldn't it? A. You could see those hinges from the inside.

Q. Yes, but I say looking at this car from the outside it would be impossible to have seen these hinges or the lack of hinges in the inside of the car? A. No, sir.

10 Q. In other words, they were not visible standing out on the truck and looking the car over and inspecting it? A. No, sir.

Q. You couldn't have seen those hinges were missing? A. No, sir.

Q. And in fact you didn't learn that there was anything the matter with these hinges on the inside of the car until after the accident happened? A. No, sir.

20 Q. And while you lay there in pain on the floor of the car you say you made an observation which disclosed to your vision the fact that one of these hinges was missing; is that correct? A. There was no hinges on the floor of the car.

Q. There were no hinges on the floor? A. Yes.

Q. How many hinges should that door have had? A. Two.

30 Q. And what you found as you lay there on the floor was that these two hinges were missing. You are sure that both were missing, or only one? A. Well, I couldn't make an affidavit as to whether both—there was nothing on the floor to show where the bolts were.

Q. What I am particularly desirous to ascertain is whether you desire to testify whether one of these hinges was missing or both of them? A. Well—

Q. What did you see? Did you see one missing or two missing? A. I seen both of them missing. Clear floor, that is the way it was.

40 Q. So that your best recollection is that as

James Schwall—Cross.

you lay down there on the floor— A. In a sitting position.

Q. —sitting on the floor, you looked down and you didn't see any bolts? A. No, sir.

Q. These doors, when they operate properly, they open in on the car floor, do they not? A. Yes, sir.

Q. And when this door came in on you it fell in in the proper manner, didn't it? A. Yes, sir. 10

Q. Except that it caused the injury to you? A. Yes, sir.

Q. But I mean, it came down in the proper way? A. Yes, sir.

Adjourned until tomorrow, Wednesday, January 9, 1918, at ten o'clock, A. M.

SECOND DAY.

Wednesday, January 9, 1918. 20

Met pursuant to adjournment.

Present, counsel as before stated.

JAMES A. SCHWALL, plaintiff, resumes the stand in his own behalf.

CROSS EXAMINATION (continued) by MR. SCOTT.

Q. Mr. Schwall, yesterday we were talking about this door. Do you know about what the weight of that door was? A. Well, a rough estimate, about 400 or 500 pounds. 30

Q. And what was it made of? A. Well, wood and iron.

Q. And about how thick was the door? A. About 2½ inches.

Q. About 2½ inches? A. 2 or 2½.

Q. Was it the same thickness all the way through? A. Well, different sections; the boards was cut in sections.

Q. But the average width of the door was about 2½ inches? A. Yes, sir. 40

James Schwall—Cross.

THE COURT: The average thickness?

MR. SCOTT: The average thickness.

Q. And where it would sit on the floor of the car it would have a base, as it were, of about 2½ inches? A. Well, I couldn't say. Well, the same dimensions, yes.

Q. The same dimensions? A. Yes, sir.

10 Q. Now, did you notice before you got started to go to the door of the car whether it was fitted into the end of the car? A. It was in an upright position.

Q. It was in an upright position? A. Yes, sir.

Q. The same as doors are when they are in a gondola car? A. They are supposed to be in a position to be locked.

Q. It was in the same position it was supposed to be when it was locked? A. Yes, sir.

20 Q. If I recollect it correctly, you testified yesterday that while there may be some vibration of the car—while there might have been some vibration of the car by reason of the men working on this tank in the car, in unloading and uncrating this tank, you did not notice any particular vibration at the time of the happening of the accident? A. No, sir.

Q. Or just a short while prior to the happening of the accident? A. No, sir.

30 Q. Is your recollection clear that from the time you left the work on the tank until the accident happened there was no vibration of the car by reason of the work of the other men on the tank? A. Well, naturally, you would have vibration from the men working around.

Q. But what is your recollection as to whether there was any vibration at the time you were going down to the door?

40 THE COURT: Do you mean after the work

James Schwall—Cross.

on the tanks had stopped or while that was progressing?

MR. SCOTT: While the other men were working on the tank Mr. Schwall started to go down towards the end door of the car, and I would like to know whether from the time he started down toward the door of the car he has any recollection as to whether there was any vibration.

10

A. What you are getting at is this: you want to know if the door was—If the door was properly fastened it would never come down, would it? That is what he is getting at.

THE COURT: Well, that is rather argumentative. Just at present he is getting at an answer to his question. Perhaps it is not quite clear what the question is.

20

(Question read.)

WITNESS: Well, that is a question—

BY THE COURT:

Q. From the time when you started to go down to the end of the car did you notice any vibration?

A. Well, you naturally wouldn't, on account of your body swinging when you are walking.

Q. Well, did you, as a matter of fact? A. No, I couldn't say.

30

BY MR. SCOTT:

Q. You have no recollection of any motion at the time? A. No, sir.

Q. So far as your recollection is concerned now, there was no motion of that car? A. No.

Q. Your actions just prior to and up until the time of the happening of the accident, as I take it, were as follows: you had been working at the tank? A. Yes, sir.

40

## James Schwall—Cross.

Q. Just prior to going toward the door? A. Yes, sir.

Q. Then, for some reason or other, you left you work at tank and faced east, toward Hoboken? A. Yes, sir.

Q. And you walked down toward the east end door? A. Yes, sir.

10 Q. Or the door which subsequently fell on you? A. Yes, sir.

Q. As you walked down there you were standing erect; you were not bending over at all? A. No.

Q. You were just standing erect, and the distance between the end of the tank and the door was approximately 15 feet? A. Yes, sir.

THE COURT: Do you mean that, the end of the tank?

20 MR. SCOTT: The end of the tank and the door.

THE COURT: The distance between the end of the tank and the door?

MR. SCOTT: And the door, was approximately about 15 feet.

THE COURT: Yes.

Q. You say yes to that, do you, Mr. Schwall? A. Yes, sir.

30 Q. And between the end of the tank and this door there was nothing to obstruct your passage? A. No sir.

Q. It was clear? A. Yes, sir.

Q. And there was nobody between the end of the tank and the door when you started to go down? A. No, sir.

Q. And there was no motion of the car as you were walking down there? A. No, sir.

40 Q. And you proceeded down in an ordinary manner, walking? A. Yes, sir.

James Schwall—Cross.

Q. And as you came within reach of the door it came in and fell on your leg? A. Yes, sir.

Q. Why it fell on your leg or what caused it to fall on your leg you do not know? A. No, sir.

Q. But when it did fall upon your leg it fell in like a door would fall if it had been hinged properly in the car, or let down properly in the car? A. Yes, sir.

Q. And, as you have told the Court this morning, in anticipation of what you thought I desired and as you told the Court yesterday—you said if the door had been properly latched on the outside it would not have fallen down? A. Yes, sir. 10

Q. Now, in view of the fact, Mr. Schwall, that when the door did fall down on your leg the fact that it fell down properly, as you say, came in as a door coming down was meant to come down, and, as you also say, was caused, in your opinion, by not being latched, the unlatching of the door, the door being unfastened, was the reason that the door fell down, and not the fact that it did not have hinges? 20

MR. LAIBLE: I object to that, if your Honor please, as calling for a conclusion.

THE COURT: I was going to suggest that you are asking the witness for his opinion.

(Question withdrawn.)

Q. Yesterday, Mr. Schwall, if I remember correctly, you said that you did not see these defective hinges on the bottom of the door of the car until after the accident happened, as you sat on the floor of the car while you were injured? A. Yes, sir. 30

Q. There was a clear space between the end of the tank and the end door as you were walking down to it? A. Yes, sir.

Q. And was it light or dark at the time you started— A. Daylight. 40

James Schwall—Cross.

Q. And you say there was nothing to obstruct your vision? A. No, sir.

Q. And were you looking at the door as you walked down toward it? A. Certainly.

Q. Will you tell us why you could not see the lack of these hinges which you subsequently discovered when you were walking down to the door?

10 A. Well, as a matter of fact, that the door would stand in its position if it was properly locked; it would never come down.

Q. (Question read.) A. Well, taking in proportion that everything was all right, taking in proportion they were all intact.

Q. The fact is, then, that you did not look for these hinges at the time you were walking down to the door? A. No, sir.

20 Q. Because the door being—A. In an upright position.

Q. —set up in its proper position, you assumed that everything was all right? A. Yes, sir.

Q. You do not know whether, if you had wanted to, from the place where you started to leave the tank to walk down to the door, in view of the fact that the door was setting in properly, whether you could have seen those defective hinges at the time, do you?

30 MR. LAIBLE: I object to that as calling for an opinion and a conclusion. I do not think the question is properly framed anyway.

(Question read.)

A. No, sir.

40 Q. And there is no doubt whatever in your mind that the first time that you saw these defective hinges was after the accident happened and while you were sitting on the floor? A. That is the only time I saw it.

James Schwall—Cross.

Q. That is the only time you saw it? A. Yes, sir.

THE COURT: Did the witness say that he saw defective hinges or that there were no hinges?

MR. SCOTT: I think the witness stated there were no hinges, may it please the Court.

THE COURT: That is my impression, that he said there were no hinges. 10

MR. SCOTT: Yes, sir.

Q. The first time that you saw there were no hinges was after the accident and while you were sitting on the floor? A. While I was sitting on the floor of the car.

Q. And that was the first time you noticed anything was wrong with the door? A. On the hinge part, yes.

Q. Well, was there anything else the matter with the door? A. It wasn't properly locked. 20

Q. Outside of the properly locked, I mean, inside of the car. A. No, sir.

Q. You remember testifying on an examination before trial, do you not, Mr. Schwall? A. I believe I do.

Q. And was your recollection at that time as to the happenings of the accident as clear as it is today? A. Pretty fair.

Q. Well, was it better or was it just as good as it is today? A. As good today as it was then. 30

Q. And it was as good that day as it is today? A. Yes, sir.

Q. Do you remember at that time, on the 3rd of August, 1917, being asked the following question and answering in the following manner: "Question: Did you notice on the car where the accident happened anything about the bolts in the door which fell down? Answer: There were no bolts across here on the floor of the car." Do you re- 40

James Schwall—Cross.

member being asked that question and answering in that manner? A. Yes, sir.

THE COURT: Bolts?

MR. SCOTT: Bolts.

WITNESS: I-bolts to hold the door upon the hinges.

10 Q. And do you remember being asked the question with respect to those bolts: "None?" to which you answered; "In the flooring, nothing to hold this door forward." Do you remember answering in that manner? A. What is that?

Q. The question was: "Did you notice on the car where the accident happened anything about the bolts in the door which fell down?" To which you answered "There were no bolts across here on the floor of the car. Question: None? Answer: On the flooring, nothing to hold this door forward." You remember answering in that manner? A. Yes, sir.

Q. And that was true? A. Yes.

Q. "When did you notice that? Answer: In walking down." Do you remember answering that question? A. It may slip my mind at the present time.

Q. Do you remember answering in that manner? A. I believe I do.

Q. And that was true? A. Yes.

30 Q. Question: "The only thing defective was that the two bolts or holes, did not have this round ring through them? Answer: No, sir." Was that true? A. Yes, sir.

Q. And another question: "Where were you when you first noticed that? Answer: Going toward the end of the car, in the center of the car." Do you remember being asked that question and answering in that manner? A. I believe I did.

40 Q. And that was a fact? A. Yes.

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Q. You said yes? A. I believe I did.

Q. And you say yes now? A. Yes.

Q. It was a fact? A. Yes.

Q. Do you remember being asked this question: "Where were you first when you observed that this door had defective bolts? Answer: Right about here, about the center of the car, at the end of the tank." Do you remember being asked that question and answering in those words? A. **10**  
That I couldn't positively say.

Q. Did you get the question, or would you like me to read it over? A. I have forgotten that answer.

Q. What is that? A. I probably couldn't give you a straight answer on that now.

Q. But if you testified in that manner to the question which I have read to you, that was true at the time, was it not? A. Yes, sir.

Q. And following the last question and answer, **20**  
do you remember being asked this question: "And you have told us that was about 15 feet away? Answer: On a rough estimate"? Do you remember being asked that question and answering in that manner? A. Yes, sir.

Q. And do you remember being asked this question: "You could observe the condition of these bolts from where you stood at that place?" To which you answered: "Yes, sir." That was true, was it not? A. Yes, sir. **30**

Q. That was the question and answer that you gave at that time? A. Yes, sir.

Q. And, then, one more question: "And then you continued walking on down toward the end of the car?" To which you answered: "Yes, sir." A. Yes, sir.

Q. That was true? A. Yes, sir.

Q. Now, Mr. Schwall, there were four men in the gang besides you, were there not? A. Yes, sir. **40**

James Schwall—Cross.

Q. One was Mr. Brown; he was the foreman?

A. Yes, sir.

Q. And then there was Baldy Brahon or—A. Baldy; yes, sir.

Q. And then there was Mr. Reed? A. Yes, sir.

Q. And then there was a fellow by the name of Watson? A. I just can't recollect all their names.

10 Q. There was another fellow, was there not?  
A. There was five of us in the gang.

Q. Now, just prior to the happening of the accident what was Brown doing? A. Well, he was working around the tank.

Q. Do you know where? A. No, I couldn't say.

Q. You could not say? A. Whether it was on the righthand side or lefthand side, or maybe he was facing the tank.

20 Q. But whereabouts you do not know? A. No.  
Q. And when you started to go down toward the end of the car do you remember where Brown was? A. He was in the car.

Q. He was in the car? A. Yes, sir.

Q. But he was not in between the end of the tank and the east end door, was he? A. No, sir.

Q. He was around, to the best of your knowledge, working on the tank some place? A. Yes, sir.

30 Q. Do you know where Baldy Brahon was at the time? A. He was working around the tank the same way.

Q. And do you know where he was? A. He was in the car.

Q. He was in the car? A. Yes, sir.

Q. But he was not in between the end of the tank and this east end door? A. No, sir.

Q. When you started to go down there? A. No, sir.

40 Q. And you do not know where he was working on the tank at the time? A. No, sir.

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Q. Now, then, this man Watson, what was he doing when you started to go down towards the end door? A. He may have been unloosening blocks.

Q. (By the Court.) What is that? A. The blocking, the shoring on this here tank.

Q. (By Mr. Scott.) But you do not know where he was when you started to go down to the east end door? A. No, sir. 10

Q. And you do not know what he was doing? A. No, sir.

Q. He was not in the space between the end of the tank and the east end door when you started to go down? A. No, sir.

Q. Now, was Reed in the car at the time when you started to go down towards the east end door? A. Yes, sir.

Q. What was he doing? A. Doing the same as the rest of the men were doing: working around the machine. 20

Q. Working around the tank? A. Yes, sir.

Q. And from the time that you started down from the end of the tank to the end door was Reed in between that space—in that space between the end of the tank and the east end door? A. No, sir; there was nobody there—

Q. In fact, from the time you started down to the east end door there was nobody down at the end of that car? A. No, sir. 30

Q. Until after the accident happened? A. Yes, sir.

Q. You are positive of that? A. Yes, sir.

Q. Now, did you observe the movements and activities of all of these other four men during the entire time that they were on the car, or were you working, going about your own business? A. Going about my own work.

Q. And you do not know who it was that unlatched the door? 40

James Schwall—Cross.

MR. LAIBLE: I object, if your Honor please. There is no evidence that anybody unlatched it.

MR. SCOTT: I shall reframe the question.

THE COURT: Strike the question out.

Q. While you were in the car and working on the tank, doing your duty there, do you know  
 10 whether any of the other men that I have mentioned by name had anything to do with unfastening the latches of the door? A. Not to my knowledge.

Q. You did not see anybody? A. No, sir.

Q. They might have unfastened it without your knowledge—some one of them might have unfastened it without your knowledge? A. Well, we  
 20 all unloaded from the side of the car; we put our material from the truck in over the side of the car, and nobody had no intentions of going to the end of the car; because we had to move it.

MR. SCOTT: I would like so much of the answer with respect to the intentions of the other parties stricken out as irresponsible, if your Honor please.

THE COURT: Strike it out.

Q. So far as you know, some of the men I have  
 30 mentioned by name might have unfastened the catches on the outside of the door without your knowledge? A. That is true.

Q. Now, Mr. Schwall, have you ever paid anything for doctors' bills as the result of this accident? A. Not to the present time, not yet.

Q. Have you ever contracted or made any arrangement with anybody—A. No, sir.

Q. —to pay doctors' bills on account of this accident? A. No, sir.

40 Q. So that up to date you have neither had any

James Schwall—Cross.

expense or contracted or agreed to pay anything with respect to medical expenses on account of this accident? A. No, sir.

Q. Your wages with Duckworth-Crawford were \$13.50 a week? A. Yes, sir.

Q. And since the time of the injury have you received your wages from them in whole or in part for any length of time?

10

MR. LAIBLE: I object to that, if your Honor please, unless Mr. Scott puts in that it has been for work or anything. If he received any gifts from Duckworth-Crawford, I do not think they could receive any credit from this accident.

THE COURT: I do not quite get the point of view. The witness has testified, I think, that he did no work after the accident—that he has done no work. You want to know if he received any pay after the accident?

20

MR. SCOTT: Any wages.

MR. LAIBLE: I object to it on the ground that the question should imply whether it was received for work the plaintiff did for Duckworth & Crawford, not only in the nature of money received by him, if he received any.

THE COURT: The question is as to wages. I think the question is not improper. The question is if you received any wages since the accident.

30

WITNESS: No, sir.

Q. Where do you live at the present time, Mr. Schwall? A. 31 Blum street.

Q. And you have lived there for how long? A. A year and about eight months.

Q. And have you done any work at all—A. No, sir.

40

James Schwall—Re-Direct.

Q.—since the accident? A. No, sir.

Q. Have you done any work as a watchman?

A. Well, no, sir.

Q. None at all? A. No, sir.

Q. Have you endeavored to get any position as watchman? A. No, sir.

Q. Have you endeavored to get any work at all of any character? A. No, sir.

10

RE-DIRECT EXAMINATION by MR. LAIBLE:

Q. Mr. Schwall, what time did this accident happen? A. Between eight and nine o'clock.

Q. And how long before the accident happened was it that the men had arrived at the scene of the accident there? A. I don't get you.

Q. (Question read.) A. The employees?

20 Q. I mean the wagon, or truck, that brought you men up there? A. We were all there at the time.

Q. About how long before the accident was it that the men had been driven up there, including yourself? A. About half an hour.

Q. And in that time, in the time that had elapsed between the time of the accident happened and the time you got there, were you working on the tank? A. Around it; yes, sir.

Q. And all the men had gotten in the car together, had they not? A. Yes, sir.

30

Q. You did not see any men get around the car on the outside? A. No, sir.

Q. You all got in together? A. Over the side of the car; yes, sir.

Q. And Mr. Brown was the foreman, was he? A. Yes, sir.

Q. And he had charge of the men there? A. Yes, sir.

40

Q. Now, in order to get this tank out, Mr. Schwall, you had to lower this door, did you not? A. Yes, sir.

## James Schwall—Re-Direct.

Q. And then you put the tank on rollers and rolled it right over the door, did you not? A. Yes, sir.

Q. You did not have to raise the tank after you had it on the rollers once? A. No, sir.

Q. This door laid almost level with the floor? A. Yes, sir.

Q. And did you see any of the men at that door before you got there? A. No, sir. **10**

Q. Did you notice the catches on the outside of the door after it had fallen? A. No, sir; I couldn't get up.

Q. Now, you were asked by Mr. Scott if you had tried to get any work. Why did you not try to get any work? A. Well, my leg wouldn't stand for it.

Q. And how long were you on crutches, Mr. Schwall? A. About nine months. **20**

Q. And you have been daily with your cane now? A. Yes, sir.

Q. You have daily walking with it? A. Yes, sir.

Q. How long did Dr. Mitchell attend you, do you know? A. Yes, sir; about nine weeks.

Q. About nine weeks? A. Nine weeks; yes, sir.

Q. Do you know what the hospital expenses were? A. No, sir.

Q. Have you been asked to pay anything to the hospital? A. No, sir. **30**

Q. Have you made any agreement to pay anybody, to pay the hospital or the doctor, in this case, Mr. Schwall? A. I would, provided I got work.

Q. You mean if you had the money you would pay it? A. Yes, sir.

Q. You have not got the money? A. No, sir.

Q. You do not know what the doctor's bill was, do you? A. No, sir. **40**

## James Schwall—Re-Direct.

BY THE COURT:

Q. Let me ask you a question, Mr. Schwall. Did any other person go down with you from the tank toward the door? A. No, sir.

Q. In what part of the car did you go down—I mean whether it was in the middle or on the one side or the other side? A. In the center of the car.

10 Q. This photograph P-1 shows the—A. You see, on the inside of the car—

Q. I am not talking about the inside of the car. That shows the outside arrangement for holding the door in place, does it not? A. Yes, sir.

Q. Have you been acquainted with gondola cars? A. Well, I have been a railroad man for somewhere around twenty odd years, twenty-seven years.

20 Q. Have you had any experience in opening a door fastened on the outside, as that is? A. Yes, sir.

Q. And how would you do it? A. From the inside, lift the lever up—that would unlatch the door on the one side—and walk over on the other side and unlatch the other side, and then walk away and let the door go in.

Q. Where is the lever? A. Well, from the picture there you can't see it. About 4 or 6 inches below there from the top.

30 Q. A metal strap? A. A piece of iron; it goes around straight.

Q. Kind of a key? A. Yes, sir.

Q. Just point out where the lever is? A. Here; it goes over this way (indicating on photograph).

Q. This key here? A. Yes, sir. The same on the other side.

Q. How do you detach it? A. You lift them up.

Q. You lift what up? A. These here latches.

40 Q. With your hand? A. Yes, sir.

## James Schwall—Re-Direct.

Q. Just pull them up? A. Yes, sir.

Q. You referred to a lever? A. I call it a lever.

Q. That is what you call it? A. Yes, sir.

Q. And you could do that from the—A. From the outside or inside.

Q. From the outside or inside? A. Yes, sir.

Q. And if you were inside—A. You would walk up to the end of the door. 10

Q. You would go to one end and—A. Release one side.

Q. —and release the catch, and then you would go to the other end and release the catch? A. Yes, and then you would walk away from the door.

Q. How would you keep the door from falling on you? A. Jump away; you would know that the door was loose, in order to come down.

Q. You would get out of the way? A. Yes, sir. 20

Q. When you went down toward the end of the car toward the door had you seen anything done to the door in the way of loosening it? A. No, sir.

Q. Have you any reason to think that it was loose? A. No.

Q. Now, about this way of getting the tank out by rollers and the door. What door is that, the door at the end of the car? A. Yes, sir.

Q. Where would the rollers be put? A. Well, you would leave this door down, and you would build a foundation after you got your tank raised up, and you would shove your roller, and you would take your plank and shove it underneath. 30

Q. What would you put your roller underneath? A. In order to come over the door.

Q. Under the door? A. No, over the door, so as to bring your piece of machinery, or your tank, outside of the car, to roll it outside, in order to get it on your truck. 40

## James Schwall—Re-Cross—Further Direct.

Q. Then the tank would be rolled—A. From the center of the car—

Q. —over the door? A. Yes, sir.

Q. And so taken out at the end of the car? A. Yes, sir.

## RE-CROSS EXAMINATION by MR. SCOTT:

10 Q. Mr. Schwall, in regard to the question that the Court just asked you, you have used the expression, "jump away," after you unfastened the door. After you got both of the catches unfastened would the door come down so quickly that it would necessitate your jumping away? A. Well, no, sir.

Q. Now, why would you jump away? A. Well, to be on safety's side, to get out of the road, so that it wouldn't get you.

20 Q. Ordinarily would the safe thing be to jump away? A. Certainly.

## BY THE COURT:

Q. About how wide was the door? A. About 3 feet.

Q. That is 18 inches (indicating). About twice that? A. Yes, sir.

## BY MR. SCOTT:

30 Q. After you got both catches off the safe thing to do was to get out of the neighborhood of the swing of the door? A. Certainly.

## FURTHER DIRECT EXAMINATION by MR. LAIBLE:

Q. What would be the usual way of opening that door, would it be from the inside or outside, Mr. Schwall? A. From the outside.

Q. But you could open it from the inside? A. Yes, sir.

40 Q. But the ordinary rule is from the outside? A. Yes, sir.

James Schwall—Further Cross; Augustus J. Mitchell—Direct.

Q. And you would open it up and push it in?

A. Yes, sir.

Q. That would be the safest way? A. Yes, sir.

FURTHER CROSS EXAMINATION by MR. SCOTT:

Q. Was there any necessity for pushing the door in after you got the catches off? A. It was supposed to be loose, in order to give it play to drop inside of the car. 10

Q. Being naturally loose after it was uncaught it would naturally fall inside on the floor of the car? A. Yes, sir.

Q. (By the Court.) If you opened it from the outside what would you stand on? A. On the end sill. There is supposed to be a board there about one foot wide, or probably less.

MR. LAIBLE: If your Honor please, I want to call the doctor out of order. 20

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AUGUSTUS J. MITCHELL, sworn in behalf of defendant.

DIRECT EXAMINATION by MR. LAIBLE:

Q. Dr. Mitchell, you are practising physician of the City of Newark? A. Yes, sir.

Q. How long have you been practising as such? A. Over twenty years. 30

Q. Are you a graduate of medical institutions? A. The City Hospital and St. James Hospital.

Q. Did you treat Mr. Schwall in this case? A. I did.

Q. How long did you treat him? A. Nine weeks.

Q. Where was it? A. St. James Hospital.

Q. What did you treat him for, Doctor? A. A compound fracture of both bones of the leg, the 40

Augustus J. Mitchell—Direct.

tibia and fibula, or, rather, right near the ankle joint.

Q. And what was the condition when you first saw him of that ankle, Doctor? A. Both bones were broken and they were exposed through the skin and mashed up.

10 Q. What is his present condition, Doctor? You have examined him since then, have you not? A. Yes, sir.

Q. When? A. I examined him here a day or two ago.

Q. And what was his condition then? A. Why, he was still lame; the leg will never be right; he has got a permanent injury.

20 Q. Now, Doctor, considering that Mr. Schwall did work as a rigger and general laborer, do you think that he will be able to use that leg as such again? A. No.

Q. Why not? A. He can't get around on it.

Q. Will it ever be in a condition where he will be able to use his leg to work? A. No, sir.

Q. Why not, Doctor? A. On account of the deformity and the weakened condition of that ankle joint.

30 Q. Would you say, Doctor, that the entire use of the leg with regard to the use for working is gone, or what percentage of it? A. So far as manual labor is concerned, getting up and down and doing any active work. He might stand around, where he could stand or sit down and just use his hands only.

Q. Well, do you think he would be ever able to use that leg without a cane? A. No, I don't think he will.

Q. Do you know what your bill was in this case, Doctor? A. Why, a hundred dollars, and the hospital fees are about a hundred dollars.

Augustus J. Mitchell—Cross.

CROSS EXAMINATION BY MR. SCOTT:

Q. Have your fees been paid, Doctor? A. No, sir.

Q. What arrangements did you make at the time that you treated Mr. Schwall? What hospital were you connected with? A. St. James's Hospital.

Q. In what capacity were you connected with that hospital? A. Visiting surgeon. **10**

Q. Is St. James's a public or private hospital? A. It is both; it is a public—it is a semi-public hospital.

Q. And was Mr. Schwall a private patient of yours there? A. He was.

Q. In a private ward? A. Private ward; yes, sir.

Q. Will you tell us under what circumstances Mr. Schwall became a private patient of yours? A. By his own volition; he stated to me that he wanted me to take care of him personally. I usually turn a lot of the cases over to my assistant to take care of them; that is, we all do, in all public institutions; and he said he wanted me to take care of him personally and would pay me for my trouble. **20**

Q. He said he would pay you for your trouble? A. For my services.

Q. Well, I mean that. That was the arrangement that you made with regard to your services to Mr. Schwall? A. Yes, sir. **30**

Q. Now, you spoke something about a hundred dollars hospital fees. What is that? A. That is because he is a private patient; he immediately becomes—the hospital fees are also charged against all private patients.

Q. Charged against private patients? A. Yes, sir.

Q. You do not become responsible to the hos- **40**

Augustus J. Mitchell—Cross.

pital for that hundred dollars, do you? A. Practically, I do. In all liability cases, and so forth, I take that responsibility of sending a bill for the hospital charges.

Q. You speak of all liability cases. What have you reference to? What application has liability cases to Mr. Schwall's case?

10 MR. LAIBLE: I object to that as immaterial, if your Honor please.

THE COURT: The question is in what sense the witness uses the word "liability".

A. Well, the hospital and the doctors have agreed— Is that what you want to know?

Q. I just wanted to know in what sense you used the expression, because I am unfamiliar with the expression, and I think we are entitled to know.

20 A. Yes. If you want to know, the hospitals feel that where corporations are insured there is no reason why the City of Newark or any hospital should take care of a case for five or six weeks or longer and not get paid for it.

Q. And this hospital bill of \$100, is that assessed to any special person? A. Assessed?

MR. LAIBLE: That is objected to on the ground that it is immaterial.

30 WITNESS: It simply means that it helps to maintain the hospital.

Q. I mean with regard to the collection of this \$100. A. It is assessed to me, if you want to call it assessed.

Q. You have not paid it? A. No, but I expect to pay it, if I ever get paid myself.

Q. And if you are never paid yourself— A. Then I get stuck.

40 Q. If you are never paid yourself, Doctor, will the hospital collect this money from you? A. Collect it from me?

Augustus J. Mitchell—Cross.

Q. From you. A. Well, I am morally bound to pay it, but the Sisters in charge feel the same as I do. It is the unfortunate part that we do a lot of work and never get paid for it.

Q. In explaining the expression "liability cases", you mentioned the fact that where the companies were insured— A. Yes, sir.

Q. —in connection with the items that we have been talking about. Will you explain just what that situation has to do with those charges of yours that you have testified about? A. They have nothing to do with it, not in this case. 10

Q. So that was just a voluntary, irrelevant remark respecting this case? A. Why, yes. You spoke about it being a public hospital. If some poor unfortunate—did you want me to explain why? For instance, if some poor unfortunate happens to fall on the street and break his leg or fracture his skull, and they are brought in, they don't expect ever to get a penny, and neither does the doctor; we don't expect that; but we feel that cases that are insured, firms that are insured, paid their insurance, why, there is no reason why the doctors or the hospital should give free treatment. 20

Q. And they naturally look to whom to get their pay? A. Why, the firm.

Q. Now, when Mr. Schwall came to the hospital had you previously met Mr. Schwall, before the accident? A. No—yes, I had; I had seen him dozens of times, and I guess he knew me. 30

Q. And did you know with respect to his circumstances? A. Did I?

Q. Yes. A. Why, I didn't think of that at the time. I never look at circumstances when there is an accident.

Q. I do not mean to impugn the fact; that, I know, has nothing to do with your professional 40

Augustus J. Mitchell—Cross.

treatment; but I am trying to classify Mr. Schwall in one of the lists or kind of patients that were received by the hospital in their ministration of mercy. Would you consider Mr. Schwall one of these poor, unfortunate persons?  
A. Why, no.

10 Q. You did not consider him— A. I didn't consider him, not when he was injured by a big railroad corporation, or any other corporation.

Q. Well, the fact that it appears, or you knew, that he was injured by a great railroad corporation immediately gave him a different financial status in your mind? A. Not at all, no, not at all, not so far as he was concerned, it was not, but with regard to the finishing up of the bill, that is all, it gave him a different standing.

20 Q. In other words, you are going to place it over on the railroad corporation? A. No, I don't mean that at all. It is simply that, if he is paid, we think we ought to be paid; that is all; nothing more than that.

Q. Now, you saw Mr. Schwall while he was in the hospital? A. Nine weeks.

Q. Did you make any X-rays? A. Yes, sir.

Q. Did you take them yourself? A. No. I do take them, but I do not have a portable machine.

30 Q. Did you inform the counsel for the plaintiff that X-rays had been taken? A. No, I didn't inform him.

Q. Did you think that they would be of some assistance in making the determination with respect to the condition of this man's leg? A. At the time, yes, and I got my benefit from the result of the X-rays, and that was sufficient for me.

Q. And they were taken shortly after the accident? A. Yes, sir.

40 Q. Have any been taken recently, to your knowledge? A. Not that I know of.

Augustus J. Mitchell—Cross.

Q. And with respect to the condition of the man's leg, you say you get your help and assistance with regard to the injury from the X-ray?

A. Yes.

Q. Is that the best and surest way of diagnosing an injury of this character? A. By all means.

Q. Your last examination of two or three days ago was not by means of an X-ray? A. No, there is no need of an X-ray now. 10

Q. The bones have knitted? A. Certainly, by this time.

Q. Well, they have, Doctor, in your opinion? A. Yes, sure.

Q. He has a deformity at the present time? A. A permanent deformity.

Q. He can stand on his leg, can he not? A. Oh, yes. 20

Q. Could you tell from your examination how the bones had knitted with respect to their alignment? A. Yes, you can see that by the looks, by looking at it.

Q. From the outside? A. Yes.

Q. And did they align properly in knitting? A. No, they couldn't align properly.

Q. Could not an operation have been performed producing a better result than was produced in this case? A. No, sir. 30

Q. You have not seen Schwall except while he was in the hospital and this recent time and today in court? A. No.

Q. And you do not know whether he walks around at times without a cane or not? A. I do not.

Q. He has actually walked around here in court this morning, has he not? A. Well, he might walk without a cane; I didn't say he couldn't walk without a cane. 40

Augustus J. Mitchell—Re-Direct.

Q. What tests did you subject him to with respect to his ability to use his leg? A. What test?

Q. Any test? A. Why, by manipulation.

Q. And did that satisfy you conclusively that he is not able to use his leg any length of time?

A. Why, anybody with any ordinary judgment by looking at the leg could see that.

10 Q. It doesn't take a doctor to do that? A. It doesn't take a doctor to see that.

MR. LAIBLE: I will offer to have it exhibited, Mr. Scott, if you wish it.

RE-DIRECT EXAMINATION BY MR. LAIBLE:

20 Q. Doctor, the purpose of an X-ray is merely to assist the doctor in knowing how to knit the bones together, is it not? A. Not to knit them together, but knowing the state of affairs and to replace the fragments as much as possible in their proper condition, that is all.

BY THE COURT:

Q. Was there a shortening of the limb, Doctor? A. Yes, there is a shortening.

30 Q. Can you tell us how much? A. He has probably got—I didn't measure it, but he probably has half an inch of shortening. You see, the bones were broken not only once, but two or three times. What I mean by that, if it was just an ordinary simple fracture, it was all right, but it is just like a match; you break two parts of it, and you have got a fragment in between; you have not got a straight break (illustrating with match), and that fragment you can't straighten out and keep it in place; that was the trouble.

40 Q. Did the bones protrude through the skin? A. Yes, sir; they protruded through the skin, both bones.

## Augustus J. Mitchell—Re-Cross—Further Direct.

Q. Was the ankle joint itself injured? A. The ankle joint was not injured, and that is the reason I did not want to operate, because it was so close to the ankle joint, and if we had he would have a stiff ankle joint.

Q. Then the ankle point is still useful? A. It is partly useful.

Q. How much limitation of motion, would you say he has, about? A. The limitation is about three-quarters. 10

Q. The limitation is three-quarters? A. Yes, sir.

Q. Leaving a quarter? A. Yes, sir.

Q. He can raise and lower his foot somewhat? A. Yes, sir.

Q. Not the full extent? A. Not the full extent.

BY MR. LAIBLE:

Q. The condition that his foot is in at the present time, does that cause him any pain? A. It usually does. 20

Q. Did he have much pain in the hospital, Doctor? A. Well, that I can't say.

RE-CROSS EXAMINATION BY MR. SCOTT:

Q. What is the present condition of his leg that usually does cause him pain? A. Why, with all injuries to bones, and where the nerve has been injured, you have pain; in any change of weather you have got pain there. I might say that that is my own experience; I have got a bad ankle myself, and I know I feel it every time we have a change in the weather. 30

FURTHER DIRECT EXAMINATION BY MR. LAIBLE:

Q. Doctor, in the condition that this ankle is in, if Mr. Schwall should stand on it considerably, what effect would that have on it? A. Why, probably he would have more pain. 40

Asa Duckworth—Direct.

ASA DUCKWORTH, sworn in behalf of plaintiff.

DIRECT EXAMINATION BY MR. LAIBLE:

Q. Mr. Duckworth, you are connected with the Duckworth-Crawford Company? A. Yes, sir.

Q. As what? A. General manager.

Q. Do you know Mr. Schwall? A. Yes, sir.

10 Q. Was he in your employ in September, 1916?  
A. Yes, sir.

Q. Now, did you send him with a gang of men to the D. L. & W. Railroad yards? A. In Harrison; yes, sir.

Q. And what did you send him there for? A. To unload a machine for the Edison Lamp Works.

20 Q. And how did you come to send him over there? A. The day previous the Edison Lamp Works called up and asked us to look at a machine there that they had, so as to have it taken out of the car and taken to their plant, so that we could notice what kind of a truck to load it on.

BY THE COURT:

Q. What company called up? A. The Edison Lamp Works. There are so many people there, I can't name them, but it was the Edison Lamp Works.

30 Q. Their works are in Harrison? A. Yes, sir.

Q. And they called up? A. Yes, sir; on the telephone.

BY MR. LAIBLE:

Q. And what did you do then? A. Why, I had my foreman in charge do the work for the Edison Lamp Works at the time.

BY THE COURT:

40 Q. He was your foreman? A. Yes, sir.

Asa Duckworth—Direct.

Q. And he did the work for the Edison Lamp Works? A. Yes, sir.

BY MR. LAIBLE:

Q. Was he doing a job for you? A. Yes, sir; working for us.

Q. He was not employed by the Electric Company? A. No, sir.

Q. He was employed by you and he was doing work for you? A. For us. **10**

Q. And you sent him over to the yards? A. Yes, to take the dimensions of the machine, to see what he needed the next day to take it from the cars.

Q. And the next day you sent whom over there? A. I sent Brown with a—a man by the name of Brown, and Baldy—I always called him Baldy—and Schwall, and—well, there was five men altogether. **20**

Q. You do not remember their names? A. Not offhanded.

Q. Well, Schwall was one of the gang? A. Yes, sir.

Q. How much were you paying Schwall a week? A. I believe a week it was \$13.50 at that time.

Q. How long have you known Mr. Schwall? A. Oh, I have known him, I guess, for eight or ten years.

Q. And have you known him as a good worker? A. Yes, sir. **30**

Q. What was his physical condition at the time he was working for you? A. Why, as far as I noticed, all excepting the one leg that he had off, he was all right.

Q. He has got a wooden leg? A. Yes, sir.

Q. Was his right foot all right? A. Sure; he walked with it without a cane or anything.

Q. You did not see this accident or know anything about it? A. No, I wasn't there. **40**

Asa Duckwoorth—Cross.

CROSS EXAMINATION BY MR. SCOTT:

Q. This telephone call came into your office the day before the accident, Mr. Duckwoorth? A. Yes, sir.

Q. That was August 31, 1916? A. Well, the day previous to the accident; the date I don't really know.

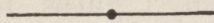
10 Q. Was it in the morning? A. No, if I am not mistaken, I think it was—I couldn't answer that; I am not sure. In fact, I don't think I myself received it; the office help received it. I was out, and when I came in they told me what happened, or what was wanted.

BY THE COURT:

20 Q. What you have answered in response to the question as to what was told you by the Edison Lamp Works was that they wanted you to look at a machine that they had over at the Harrison freight yards in a car there? A. Yes, sir.

Q. For the purpose of seeing what kind of a truck was necessary to be used to unload it? A. Yes, sir.

Q. And that was all the conversation? A. Yes, sir.



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William C. Brown—Direct.

WILLIAM C. BROWN, sworn in behalf of plaintiff.

DIRECT EXAMINATION BY MR. LAIBLE:

Q. Mr. Brown, where do you live? A. 80 Summer avenue.

Q. And by whom are you employed? A. Duckworth-Crawford Company.

Q. And by whom were you employed on or about September 1, 1916? A. By the same people.

Q. As what? A. Rigger.

Q. Were you present when Mr. Schwall was injured? A. Yes, sir; I was working on the same job.

Q. The same job? A. I had charge of it.

Q. You were in charge of the men? A. Yes, sir.

Q. Now, had you gone over there the day before that? A. Yes, sir; I was down the day before, and I looked at that car to see what we needed to move the tank off of it.

Q. And did you see anybody there from the railroad? A. Well, the agent of the Harrison freight yard.

Q. Where was he? A. I stopped at his office and told him that the car would have to be moved so that I could get the machine out of the end.

Q. (By the Court.) Whose office was it? A. D. L. & W. Railroad's freight office.

Q. You did not mention the man's name? A. No, sir; I didn't know his name; I don't know it yet.

Q. You went to the freight office of the D. L. & W.? A. Yes, sir.

Q. Where is that, in Harrison? A. Yes, sir.

BY MR. LAIBLE:

Q. And you saw him about this car? A. Yes, sir.

William C. Brown—Direct.

Q. What did he do? A. I told him that the other cars would have to be moved down so that I could get the machine out of the end, and he said he would have it done in the morning for us.

Q. And you went there the next day? A. Yes, sir.

10 Q. And what did you do then? A. Well, I planked the track, I got my tools inside and got the men in there, and we loosened the machine up, and while I was jacking it up I told three men to take the door down so that we could get it out of the end, and while myself and one of the men, I think it was Baldy, were putting the rollers under the machine I heard Schwall holler, and I looked I came from behind the machine and I looked and I seen the door was lying on him, and there was three or four of us got a hold of it and  
20 lifted it off of him.

Q. At the time the door fell was there anybody else around Schwall? A. I don't know who else was there, but the whole gang ran to him as soon as the door fell and he hollered.

Q. The whole gang ran to him? A. Yes, sir.

Q. Did you notice this door before you sent anybody there? A. No, sir; I did not.

Q. Did you notice what the condition of it was afterwards? A. I noticed it lying on his leg; that is all I could see.

30 Q. What was its condition? Was it in good condition? A. No, it fell over on his leg; it was loose.

Q. Loose how? A. Of course, it came loose at the top and came down on his leg; it was loose at the top and bottom, and we picked it up and carried it back to its place.

Q. You picked it up? A. Yes, sir; picked it up bodily.

40 Q. Were there any fastenings on it? A. No, sir; none at all.

William C. Brown—Direct.

Q. You could pick it up and move it around?

A. Yes, sir.

Q. That was immediately after the accident?

A. Yes, sir; that was immediately after the accident.

Q. How heavy was that door? A. I should judge it would weigh around 600 or 700 pounds; it was a two and a half plank, three boards, with about half an inch of iron lined inside.

10

BY THE COURT:

Q. A two and a half inch plank, three boards?

A. Yes, sir.

Q. One over another, you mean? A. Yes, sir.

Q. What would that make the thickness, three times two and a half? A. No, sir; it was two and a half inches thick; I guess they were about 10 inch plank, a 12 inch plank.

20

BY MR. LAIBLE:

Q. When you first got there you drove up how?

A. Drove up alongside of the car.

Q. As close to the car as you could? A. Yes, sir.

Q. And then you threw the tools inside, the rope and everything? A. Yes, sir.

Q. And then all the men got in? A. Yes, sir.

Q. Did any of the men go to this door before it fell? A. No, sir; not until I told them; I told them to go and open the door so that we could get the machine out.

30

Q. Did you see anybody of the railroad there that morning? A. I didn't until after I reported that this man was hurt.

Q. How did you get into the car, Mr. Brown? A. Over the side.

Q. By jumping over it? A. Yes, sir.

Q. And what time had you got there? A. I should judge between eight and nine o'clock.

40

William C. Brown—Direct.

Q. And what time did the accident happen?

A. Well, around nine.

Q. And what did you do after the door had fallen? A. Well, we lifted the door off, and I sent one of the fellows to call up for an ambulance to take him to the hospital, and one of the other fellows, Baldy, I think it was, I sent for his brother, at the steel works; I called up my boss at the same time.

Q. And Mr. Schwall was taken to the hospital, was he? A. Yes, sir.

Q. Did you notice what the condition of his leg was? A. Well, it was bleeding; that is all I could see. We tied it up in a couple of pocket handkerchiefs we had there. The doctor came with the ambulance.

Q. When you lifted the door away from Mr. Schwall did you see whether it was just as if it had fallen over, as if it had hinges on, or what was the condition? A. It dropped over the same as the hinge would have held it, but there was none there; it dropped right down.

Q. What was its position when it was down, was it level with the end of the car? A. Well, it was about that much from the end, from its natural position (indicating).

Q. (By the Court.) Can you tell us how far that was? A. About a foot.

Q. (By Mr. Laible.) It moved away from where it should be? A. Yes, sir.

BY THE COURT:

Q. You mean the bottom—? A. Yes, sir; the bottom.

Q. ———had gotten away from the place where it would naturally rest about a foot? A. Yes, sir; from its natural place.

William C. Brown—Direct.

BY MR. LAIBLE:

Q. Afterwards you took this tank out? A. Yes, sir.

Q. And you took it over to the— A. Over to the Edison plant.

Q. After the accident did the railroad company come up and take away these other cars?

Objected to.

10

THE COURT: Is that important?

(Question withdrawn.)

Q. If this door had opened in properly, how would you move this tank out, right over the door while it was lying flat? A. Yes, sir; roll it right over the door, skid it over with rollers.

Q. (By the Court.) Do you know what that tank weighed? A. I think it was billed out at six tons; I am not sure.

20

Q. (By Mr. Laible.) How long did it take to prepare that tank to move it to the end of the car before you told these three men to go up and take the door down? A. About thirty minutes.

BY THE COURT:

Q. You mean that the tank had been moved to the end of the car? A. To get it ready to move.

Q. You had not moved it? A. We hadn't moved it.

30

BY MR. LAIBLE:

Q. Then you had to put rollers under it? A. Yes.

Q. How much did the tank weigh?

THE COURT: He said it was billed at six tons.

A. I think it was billed out at six tons.

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William C. Brown—Cross.

CROSS EXAMINATION BY MR. SCOTT:

Q. I think you said three men were set down to drop this door? A. Yes, sir.

Q. You don't know which ones? A. I don't know exactly which ones.

Q. You know that Schwall was one of them? A. Yes, sir; I know Schwall was one.

10 Q. But you do not know whether Baldy was one of them? A. Baldy—

Q. Or Reed? A. I think it was Watson; I am not sure.

Q. Or Watson? A. I know there was three of them I told to go there.

Q. (By the Court.) Baldy was one? A. I am sure Baldy was one, and I think the other one was Watson.

20 Q. (By Mr. Scott.) What makes you sure it was Watson, Mr. Brown? A. I think it was him; I am pretty sure it was him; I don't know exactly who it was.

Q. You do not know exactly who the third man was? A. No.

Q. It may have been either Watson or Reed? A. It may have been; one or the other; I don't know; I am not sure.

Q. It may have been tieher Watson or Reed? A. Yes, sir.

30 Q. Now, the only machinery in this car when you went down the day before the accident to look it over was this six ton tank? A. This tank and a lid for it, that is all.

Q. The lid for the tank? A. Yes, sir.

Q. Was that all crated in or fastened to the car in any way? A. The lid lay loose in one end of the car and the tank was nailed, or strapped, to the car.

40

William C. Brown—Cross.

Q. What do you mean by "strapped to the car"?

A. It was wired across to keep it from shifting, and blocked at the bottom by blocks.

Q. You made no particular observation of this door in the rear of the car before the accident, did you? A. No, sir.

Q. Neither from the inside or outside? A. No, sir, I did not.

Q. From what observation you did make before the accident, the door looked to be apparently in proper condition? A. As far as I noticed. I never paid no attention to how the door was.

Q. But nothing unusual with respect to the door attracted your attention to it? A. No, sir.

BY THE COURT:

Q. Let me ask you a question. Suppose this door, instead of falling, had come down in the ordinary way, what would you then have done next? A. Sir?

Q. What would you then have done next after the door had been lowered, supposing there had been no accident? A. We would have unloaded the machine then.

Q. How near was the end of the car to some other car? A. You mean the end the door fell on?

Q. Yes. A. That was, I should judge, about 15 feet; there was room enough to back a 15 foot truck in.

Q. There was room enough for that? A. Yes, sir.

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Baldy Brahon—Direct.

BALDY BRAHON, sworn in behalf of plaintiff.

DIRECT EXAMINATION BY MR. LAIBLE:

Q. Mr. Brahon, where do you live? A. 35 Seventh avenue.

Q. By whom are you employed? A. My boss.

Q. Whom do you work for now? A. I am work-  
10 ing on the meadows.

Q. Down in the dye works? A. The dye works.

Q. For whom were you working on September 1, 1916? A. Mr. Duckworth.

Q. Duckworth & Crawford? A. Yes, sir.

Q. Where were you on that day? A. In 1916?

Q. Yes. A. That is hard to tell, in 1916.

Q. (By the Court.) Where were you on the day of the accident? Where were you when Schwall was hurt? A. When this fellow got  
20 hurt?

Q. (By Mr. Laible.) Yes, where were you when Schwall was hurt? A. I was over in Harrison. I am half asleep; I worked all night; you will have to wake me up. I was in Harrison.

Q. Whereabouts in Harrison? A. Down at the D. L. & W. freight depot, the freight station.

Q. The D. L. & W. freight station? A. Yes, sir.

Q. Whom were you with? A. Bill Brown.

Q. Who else? A. This man that got hurt—we  
30 call him Bert; I don't know what you call him—and Mr. Reed and a fellow called Jackson; I forget the other fellow's name.

Q. (By the Court.) Schwall was there? A. That is the one I was telling about; we used to call him Bert, for a short name, I suppose.

Q. (By Mr. Laible.) The other fellow's name was Watson, was it not? A. Watson.

Q. What time of the day did you go over there?  
40 A. We left the place—we got over there a little about eight or a little after eight.

Baldy Brahon—Direct.

Q. And how did you go over there? A. We drove over.

Q. With a truck? A. A truck, a wagon.

Q. All the men on one wagon? A. Sure.

Q. Who was the foreman? A. Bill Brown was foreman.

Q. And when you got over there what did you do with the truck? A. Pulled up—we found the car and pulled alongside of it. **10**

Q. And what did you do then? A. We got our stuff off and threw it on the car, what we wanted, and Bill gets a jack, and I gets a jack and started jacking this machine up; we started jacking; he was on one side and I was on the other side.

Q. What was this that you were jacking up? A. I don't know; it was iron, something; I don't know what you call it; a fan, or some machinery.

Q. A cylinder? A. Some kind of a machine. **20**

Q. Was it round shaped or square, or what? A. It was made something like a drum.

Q. Where were the other men? A. We was all around there, working around, and Bill Brown told someone to go and move the door, to get the door set, so that when the engine came down we could get this thing out of the end of the car, so that we could get out of the end of the car; it had to come out.

Q. Did you see Schwall get hurt? A. I didn't see him get hurt; I heard it, and I looked around then and the door was on his leg. **30**

Q. And what did you do then? A. I went and got hold of the door.

Q. Who was the first man that got to him? A. I got there first; when I looked around to see him I went right around the tank.

Q. Where were the other men? A. They were all coming.

Q. You got there first? A. Sure; I was closest to him. **40**

## Baldy Brahon—Cross.

Q. Was there anybody there when he fell? A. I don't see anything there.

Q. Where was Mr. Reed? A. Mr. Reed?

Q. Yes. A. He was on the car there.

Q. Where? A. He was on the same car that we was on.

10 Q. But where was he? A. I don't know; about the center; somewhere about the machine, anyhow.

Q. Were there any other men up by the door besides Schwall? A. I didn't see anybody.

Q. You were the first one that got there? A. Sure; I was nearest him.

20 Q. Did you notice the door after it had fallen on him, what the condition of it was? A. We lifted the door up. I didn't notice the door, because I took my handkerchief and tied it around his ankle, and he told me to go for his brother, and I left and went over to the steel works to get his brother.

Q. You do not know what happened to the door? A. No, sir; I don't know what happened to the door.

Q. What was the condition of Mr. Schwall's foot when you tied the handkerchief on it? A. The bone was sticking out about like that (indicating).

30 Q. Anything else? A. I tied the handkerchief around his ankle like that (indicating).

Q. When did you see Mr. Schwall again? A. Last summer some time was the first time I seen him.

## CROSS EXAMINATION BY MR. SCOTT:

40 Q. Mr. Brahon, you did not see this accident happen to Mr. Schwall, did you? A. I didn't see it happen, but I seen it right after, that is all.

## Baldy Brahon—Cross.

Q. At the time the accident happened the first thing you knew about it you heard Schwall holler?

A. Yes, I heard him holler.

Q. And you were working on the tank with Mr. Brown? A. Yes, sir.

Q. Mr. Brown was on one side and you on the other? A. That is right; I was right here and he was right over there on the other side (indicating). **10**

Q. What was Watson doing? A. Bill told him to go and do something; I couldn't tell what he was doing.

Q. You could not tell what Watson was doing? A. No, sir. I was attending to my own work; I didn't have no time to bother with him.

Q. Do you know what Reed was doing just before the accident? A. No, sir; I don't know exactly what he was doing. Bill told him to do something; I don't know what it was. **20**

THE COURT: Just say yes or no.

Q. Were you one of the three men that Bill Brown told to go down and let down the door?

A. No, I wasn't one of them.

Q. You were not one of the men? A. No.

Q. And you do not know why the door happened to fall at the particular time it did fall on Bert, or Mr. Schwall, do you? A. Sir? **30**

Q. You do not know why the door did fall on Bert, or Mr. Schwall? A. No, sir; I do not.

—●—  
PLAINTIFF RESTS.  
—●—

William R. Kain—Direct.

WILLIAM R. KAIN, sworn on behalf of defendant.

DIRECT EXAMINATION BY MR. SCOTT:

Q. Mr. Kain, you are the freight agent of the Delaware, Lackawanna & Western Railroad, at Harrison? A. Not the freight agent; in charge  
10 of the freight station and yards; it comes under the Newark station.

Q. On September 1, 1916, do you remember an accident happening at the Harrison yards? A. I do.

Q. Where did that accident happen? A. It happened in the freight yards, in a car in the freight yards.

Q. And what was the character of the accident, in a general way, what happened? A. Why, Mr.  
20 Schwall had his leg broken.

Q. Do you know what car Mr. Schwall was hurt while on? A. I don't know the number; I could identify the car; a Pennsylvania line car.

Q. Did you make a record of it? A. I made a record as soon as the accident was reported.

Q. Have you the record here? A. I have; it is a pink book.

Q. This book here (shown to witness)? A. That is the one.

Q. That was made, you say— A. That was  
30 made that morning. When anything unusual happens I report right directly to Mr. Lane.

Q. And this record is in your handwriting? A. It is in my handwriting; yes, sir.

Q. (By the Court.) When was it made? A. That morning, September 1st.

Q. (By Mr. Scott.) By looking at this record, will that refresh your recollection as to the number of the car? A. That will.  
40

William R. Kain—Direct.

Q. Will you kindly look at it and advise us as to the number of the car? A. Pennsylvania Railroad car 853,159.

Q. 853,159? A. 853,159.

Q. And the initials of the car were what? A. P. L., the Pennsylvania system, the Pennsylvania line, P. L.

BY THE COURT:

10

Q. What does that mean? A. P. L., Pennsylvania line; it is all one system.

BY MR. SCOTT:

Q. What have you to do, Mr. Kain, with the checking up of the yard in Harrison? A. Why, the situation in the morning is taken at seven o'clock; that shows all cars in the yard at seven o'clock. It isn't taken by me personally; it is taken by one of the men in my charge.

20

Q. Do you personally make any record of the cars in your yard? A. I do; I make the situation, what is called the yard situation.

Q. And when do you make that? A. I make that when he brings it in. He takes a record of all cars in the yard; he brings it in, and then it is put in what we call the situation sheet.

Q. What is that gentleman's name? A. C. Hellerman, Charles Hellerman.

BY THE COURT:

30

Q. What was he, was he a man there? A. Yes, sir.

Q. What was he? A. He was receiving and delivery clerk in the freight house and yard man.

BY MR. SCOTT:

Q. Is this situation sheet that your refer to here? A. That is here.

Q. That is made from a record that was turned over to you? A. Yes, sir.

40

William R. Kain—Direct.

Q. But that is not the original record? A. The book that you have in your hand is the original; the situation sheet has to be taken from the yard situation.

Q. This book is made by Mr. Hellerman? A. Yes, sir.

BY THE COURT:

10 Q. The book that Mr. Scott holds in his hand was made— A. Filled out by Mr. C. Hellerman.

Q. It was made by Mr. Hellerman, who was a yard man? A. Yes, sir.

Q. Made every day? A. Yes, sir.

Q. And the result of that record passed into what other statement? A. What is called the situation sheet.

Q. That was made up from this? A. Yes, sir.

Q. Made up from anything else? A. That is all.

20 Q. That sheet was made by whom? A. By me; I make that.

Q. Who? A. I make it.

Q. Personally? A. Yes, sir.

BY MR. SCOTT:

Q. Now, Mr. Kain, can you without looking at any records advise us when this car arrived at the Harrison yard? A. It arrived on the morning of August 30th, at nine A. M.

30 Q. August 30th? A. August 30th.

Q. And it was placed where? A. In the Fourth street yard.

Q. On what track? A. On track I.

Q. And what is that track, what kind of a track? A. It is a public track.

Q. A public delivery track? A. A public delivery track.

40 Q. Now, when you saw this car in the yard, will you tell us whether it was loaded or not? A. I didn't take the record of the car com-

William R. Kain—Direct.

ing in; as I tell you, my man, Mr. Hellerman, takes that.

Q. But when you saw the car— A. When I saw the car it was loaded.

Q. What was it loaded with? A. Machinery.

Q. It was loaded for whom? A. For the Edison Lamp Works, or the General Electric Company.

Q. How many men have you at the Harrison station? A. At the present time there is five there. 10

Q. At that time there were how many? A. At that time four.

Q. Young men or— A. Well, yes, according to what we can get for the labor.

Q. Did you have any facilities at that place for unloading machinery of this character? A. No, we have no facilities there for unloading heavy machinery. 20

Q. Do you know whether there was anything else aside from the shipment to the Edison people in this car? A. No, there was nothing.

Q. There was nothing else? A. No, sir.

Q. And this shipment was a shipment to the Edison people? A. Yes, sir.

BY THE COURT:

Q. What indicated that this machine was destined to go to the Edison Lamp Works, or the General Electric Company? A. It was billed from the point of origin to Harrison. 30

Q. A bill of lading? A. Bill of lading.

Q. Where was that? A. Cleveland, Ohio; Wasson street, I believe.

Q. Where was that paper? A. What paper?

Q. Where was the bill of lading? Did it come to you through the mail? A. It was billed. We get no billing at Harrison; all billing is taken into account at Newark. 40

William R. Kain—Direct.

Q. What was it that indicated to you that it was to go to the Edison Lamp Works? A. The car clerk at Newark tells who the car is for. When we get new cars in we call the car clerk, and in turn he tells who the car is for and the contents.

10 Q. Then it was not marked in any way? A. No, sir; the cars are not marked.

Q. I mean the machine was not marked? A. No, sir.

Q. Then you called up the car clerk at Newark? A. At Newark.

Q. And he got his directions? A. Yes, sir.

20 THE COURT: As some books have been referred to, let the book made by Mr. Hellerman be marked for identification, or in evidence, or in some way, so that we will know it when we see it again. Let it be marked for identification.

MR. SCOTT: Yes, sir. I also referred, your Honor, to what is known as a check sheet, that shows the situation; I referred to that. I will have that marked, if your Honor desires, for identification.

THE COURT: Let them both be marked for identification. Is there any particular page in this book to be marked?

30 WITNESS: It is dated.

MR. SCOTT: It is dated August 30th and successively.

WITNESS: August 31st and the 1st of September.

40 THE COURT: Show the book to the witness and ask him on what page the memorandum appears. Are the pages numbered?

William R. Kain—Direct.

WITNESS: No, sir; they are dated.

Q. What do you call that book? A. The yard situation; daily check of cars, it is called.

Q. Daily check of cars? A. Daily check of cars.

Q. On that date of— A. August 30th.

Q. What do you find on that date? Just tell us what you find there. A. I find this car in question.

Q. What does it show? A. "853,159, P. L., gondola, load". **10**

Q. Allow me to see that. (Witness hands book to the Court.) "Condition good"; is that it? A. "Gd." "G"; that is the kind of car, gondola; it is an abbreviation for gondola.

Q. What is this check mark under the head of "Lading"? A. "Load."

Q. What does that mean? A. That the car was loaded; that it didn't come in as an empty car. **20**

(The page indicated by witness is marked D-1 for identification.)

THE COURT: Now, you refer to a situation sheet, Mr. Scott.

MR. SCOTT: Yes, sir.

BY MR. SCOTT:

Q. Mr. Kain, you have the situation sheet before you? A. Yes, sir.

Q. Does the car in question appear on that situation sheet? A. It does. **30**

BY THE COURT:

Q. This is bound into a book? A. Yes, sir.

Q. Or is it made in the book? A. It is bound in the book; we make a book out of them.

Q. Is it paged or is it under a date? A. It is under a date.

Q. What date is that? A. August 31st.

Q. This is a compilation made by you from other things? A. Yes, sir; that is it. **40**

William R. Kain—Direct.

Q. How does it read? A. It reads, "P. L., 853,159, gondola, 8/30", meaning date of arrival, August 30, "machinery, General Electric Company".

Q. That is the consignee? A. Yes, sir.

(The page indicated by witness is marked D-2 for identification.)

**10** BY MR. SCOTT:

Q. And that car also appears on the yard situation for— A. September 1st; that would be one sheet back.

THE COURT: What book is that?

MR. SCOTT: The yard situation.

Q. Does it appear there? A. It does appear (indicating in book).

**20** BY THE COURT:

Q. How is the yard situation book made up? You say this appears— A. In the same book, for September 1st.

Q. In the same book? A. In the same book.

Q. What is the purpose of that entry? A. Why, we have to keep showing as long as the car is in Harrison—you have to keep showing that the car is there; it is the situation of the car; it is where the car is.

**30** Q. How does that read? A. "September 1st"—it reads the same. Do you want me to repeat it?

Q. Yes, read it. A. "P. L., 853,159, gondola, 8/30", meaning August 30th, "machinery, General Electric Company".

(The page indicated by witness is marked D-3 for identification.)

BY MR. SCOTT:

**40** Q. What method do you take with respect to

William R. Kain—Direct.

notifying consignees of the arrival of a car? A. The railroad have what they call a constructive placement, which is made up in duplicate form, which shows the date—it shows the station—that would be Harrison—the date, whom the notice is for, the car number, the initial, contents, where from, where the car is placed, whom the notice is delivered to, and the original is signed by the receiver, by the receiver of the notice, and it is kept by the railroad, and the duplicate is held by the consignee. 10

BY THE COURT:

Q. Is that something that goes by mail? A. No, it is delivered.

Q. Personally delivered? A. It is delivered.

BY MR. SCOTT:

Q. I show you a constructive placement, "P. L., car 853,159, Harrison station," dated "8/30, 6:15", and ask you if that is in your handwriting (shown to witness)? A. Yes, sir. 20

Q. Looking at that notice, I notice down in the left-hand corner a certification, "I hereby certify that a copy of this notice was delivered by me to Mr. Bell, representing the consignee named hereon, at 9:20 A. M., 8/30/16". Signed "W. R. Kain". Is that your signature (shown to witness)? A. That is my signature. 30

Q. Now, looking at that notice, will you tell us when you served that notice? A. Served it at 9:20.

Q. On what date? A. On August 30th.

Q. And on whom did you serve it? A. Mr. Bell, of the General Electric Company.

Q. Did he receipt for it in any way? A. There is the receipt (indicating).

Q. Did you see him sign it? A. I did. 40

William R. Kain—Cross.

BY THE COURT:

Q. What is his name? A. Mr. Bell, B-e-l-l.

Q. He was the agent of the General Electric Company? A. Yes, sir.

Q. That is a notice of the reception of the car?

A. That is it.

BY MR. LAIBLE:

10 Q. That is the original? A. That is the original; yes, sir.

Q. Made out by yourself? A. I made that out; yes, sir.

Q. And the duplicate of that you served on the General Electric Company? A. The General Electric; yes, sir.

MR. LAIBLE: I shall consent to its going in evidence, if your Honor please.

20 (Marked Exhibit D-1.)

CROSS EXAMINATION BY MR. LAIBLE:

Q. Mr. Kain, your office is in Harrison? A. Yes, sir.

Q. Inside? A. Inside.

Q. You have nothing to do outside in the yard at all? A. Well, it is a station that requires all kinds; there is nothing in particular. If you are in charge of it, you have to be there all around.

30 Q. The majority of the work is done by a man outside? A. A majority, in the freight house.

Q. And the car clerk, you say, is in Newark? A. In Newark; yes, sir.

Q. And when a car arrives in Harrison—does he instruct where the car goes? A. Why, what is called the running card of the company tells where the car is to be placed.

40 Q. And then when a car arrives in Harrison you call him up to find out where it is going? A. I find out who it is for and the contents.

John O. Penter—Direct.

Q. And you in turn notify the consignee? A. The consignee.

Q. As you did in this case? A. Yes, sir.

Q. And this car was brought in over your tracks? A. Yes, sir.

Q. So far as the contents and everything were concerned, you took the word of your man? A. Yes, sir.

10

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JOHN O. PENTER, sworn in behalf of defendant.

DIRECT EXAMINATION BY MR. SCOTT:

Q. Mr. Penter, you are the chief clerk of the freight station in Newark of the Lackawanna Railroad? A. Yes, sir.

Q. Harrison is how connected with your station? A. It is controlled by the Newark station.

20

Q. It is controlled by the Newark station? A. Yes, sir.

Q. What record or what knowledge has the Newark station of Harrison cars, or cars consigned to Harrison? What is the first intimation that they have that cars are on the way to or destined to Harrison station? A. We receive a car waybill, or a running card, which travels with the car.

Q. (By the Court.) How do you receive it, by mail? A. We receive it from the yard department either by messenger or by engine up to the office window.

20

Q. (By Mr. Scott.) Is there any other record that you receive with respect to the car? A. We receive a waybill, the revenue waybill, from the originating point.

Q. Whom is that issued by? A. By the originating railroad.

40

John O. Penter—Direct.

Q. And those come by train mail? A. Come by train mail, yes.

Q. And they are first turned in to the Newark station? A. Turned in to the Newark station, yes.

Q. Turned in to you, and then distributed by you to your clerks? A. Yes, sir; I receive the waybills.

10 Q. I show you a paper and ask you what this paper is, Mr. Penter (shown to witness)? A. That is an original revenue waybill.

Q. Of what line? A. Of the Star Union line.

Q. What company is that? A. The Pennsylvania system.

Q. And what car has that reference to? A. P. L., 853,159.

20 Q. And from that revenue waybill what is the history, as it were, of that shipment, where from, to whom, by what route? A. It is consigned to the Edison Lamp Works, Harrison, New Jersey, from the Strong, Carlisle & Hammond Company, Wasson street, Cleveland, Ohio. That is a street freight station in the suburbs of Cleveland. It doesn't show here. It is a main line freight station. The shipment travelled from the originating point, via Ravenna, Niles, New Castle, Oil City, Olean, New York, and Buffalo Transfer, Lackawanna Railroad. The waybill covers a shipment of one special smelting furnace, crated on skids.

30 Q. (By the Court.) What does that mean? A. "On skids" means on blocks, to protect it from breaking, I suppose; that is, heavy blocks, or skids, on the bottom of the machine. One piece of pipe attached to skids, one cover on skids; entire weight of shipment is billed 10,280 pounds.

40 Q. (By Mr. Scott.) From that paper, Mr. Penter, are you able to tell us on what line this

John O. Penter—Cross.

shipment originated? A. The Star Union, Pennsylvania lines.

Q. That is a line foreign to the Delaware, Lackawanna & Western Railroad? A. Yes, sir.

Q. And can you also tell us where the Lackawanna, or the Delaware, Lackawanna & Western Railroad Company, received such shipment? A. At the Buffalo Transfer, known as East Buffalo.

10

MR. SCOTT: I offer this waybill.

MR. LAIBLE: I have no objection to that.  
(Marked Exhibit D-2.)

CROSS EXAMINATION BY MR. LAIBLE:

Q. Mr. Penter, this car, you say, was taken to East Buffalo, or the Buffalo transfer station of the Delaware, Lackawanna Railroad, by the Pennsylvania Railroad, or the Union line; is that right? A. No, not taken to East Buffalo by the Star Union line; it traveled over other lines to Buffalo.

20

Q. By certain transfer lines, or connecting lines, until it got to Buffalo? A. Yes, sir.

Q. Then from Buffalo the D. L. & W. brought it in to Harrison? A. Brought it in to Harrison; yes, sir.

BY THE COURT:

Q. What is there to show in any given case who owns the car? A. According to the initials of the car, it is owned by the Pennsylvania system; the Pennsylvania lines.

30

Q. What? A. The initials of the car, P. L., indicating Pennsylvania lines, either the western or eastern. West of Pittsburg the Pennsylvania lines all run west, Buffalo and Pittsburg.

BY MR. LAIBLE:

Q. Mr. Penter, is it not a fact that cars of

40

Harold E. Boe—Direct.

other roads are used continuously by railroads?

A. We use them, but I don't know about continuously.

Q. Is it not a fact that the D. L. & W. often has on its freight trains cars from other railroads?

A. Undoubtedly.

Q. You often see a long line of them? A. Yes, sir.

10 Q. And they are using them themselves? A. Yes, sir.

Q. As is done by custom? A. Yes, sir.

Q. Agreed to by all the railroads? A. Yes.

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HAROLD E. BOE, sworn in behalf of defendant.

DIRECT EXAMINATION BY MR. SCOTT:

20 Q. Mr. Boe, you are familiar with the use of a camera? A. Somewhat.

Q. And on September 1, 1916, did you take a photograph of a certain car in the Harrison yard? A. I did.

Q. I show you a photograph, Mr. Boe, Exhibit P-1, and ask you if you took that photograph? A. Yes, sir.

Q. And that is a photograph of what car? A. P. L., 853,159.

30 Q. And when did you take it? A. September 1, 1916.

Q. You took another photograph of that car, Mr. Boe? A. Yes, sir.

Q. That is of the same size? A. Yes.

Q. And that was a picture of that car with the— A. With the door down.

Q. From the inside of the car, with the door up? A. I took another, too.

40 Q. But, I say, you also took a photograph with the door up? A. Yes, sir.

Harold E. Boe—Cross.

Q. Inside of the same car? A. Yes, sir.

Q. And on the back of this other photograph your notations were made there showing when the photograph was taken? A. Yes, sir.

Q. And those two photographs correctly represent the situation? A. Yes, sir.

Q. And the condition of the car as depicted by the photographs? A. Yes, sir.

10

CROSS EXAMINATION BY MR. LAIBLE:

Q. What time of day did you get there? A. About one o'clock.

Q. The door was up then, was it not? A. No, sir; it was not.

Q. It was not up? A. No, sir; I assisted in putting it up.

Q. Where was it? A. On the side of the car.

Q. You mean lying along the side of it? A. **20**  
Yes, sir; lying alongside of one of the sides of the car.

Q. It was not lying flat on the ground? A. No, sir.

Q. It had been taken away from its place? A. Yes, sir; on the south side.

Q. And you went to work and took it and put it back? A. Yes, sir.

Q. Did you do it yourself? A. No, sir.

Q. How many men did it? A. One man. **30**

Q. One man? A. Yes, sir.

Q. Besides yourself? A. Besides myself.

Q. Who was the man? A. Theodore Lypin, car inspector.

Q. It was a pretty heavy door? A. Yes, sir; it was.

Q. You are employed by the railroad company, too, are you not? A. Yes, sir; I certainly am.

Q. As investigator? A. Yes, sir.

Q. And you went right out there as soon as you **40**

Harold E. Boe—Cross.

got information about the accident? A. Yes, sir; I got there about half-past eleven; I waited there until the car inspector came there, about one o'clock.

Q. And when you got there the door was off its hinges at the bottom? A. It certainly was.

BY THE COURT:

10 Q. What day was it? A. September 1, 1916.

Q. What did you do? You said the door was off its hinges. What did you do in replacing the door? A. Dragged it along the floor.

Q. Of the car? A. Yes, sir. It lay about 2½ feet away from the end of the car, the east end.

Q. That was the end where it had formerly been? A. Yes, sir.

20 Q. What did you do in adjusting it? A. Dragged it along until it fitted into the side posts, and then lifted it up, lifted one side of it, or one end of it, the top end.

Q. What was it that held it fast after you lifted it? A. When it got up in position it stayed there itself, up against the end posts.

Q. Was there any groove or fastening of any kind which held it? A. When we first placed it up against the end, do you mean?

Q. Yes. A. Well, yes, on the outside, to prevent it from falling out.

30 Q. What did you find on the outside? A. Why, I think it was a steel casing about—

Q. What? A. A steel lining of some sort that held it from falling outside of the car, that prevented it from falling outside; the only way it could fall was inside.

Q. Where was this steel casing, on the door itself? A. No, sir.

Q. Or on the car? A. On the car.

40 Q. You say that prevented it from falling out?  
A. Falling out.

Harold E. Boe—Cross.

Q. You see some apparatus there at the top on each side, do you not (indicating on photograph)? A. Yes, sir.

Q. Were those there? A. Do you mean the posts or the latches?

Q. Something that looks like a strap. A. Yes, we put those in position to show that they had been there; that was the object of taking that photograph, the way it was taken, to show that the latches were there and would go into position. 10

Q. They worked all right, did they? A. Absolutely, and to unlatch it we had to use a hammer.

Q. What is that? A. In taking those latches out we had to use a hammer; they went in all right, but to get it open we had to use a hammer.

Q. Is there anything on the inside of the door? A. No, sir. 20

Q. In the way of a hinge, or anything of that sort? A. No, sir.

Q. The steel lining would prevent it falling out, but when you had detached the fixture at the top was there anything to prevent it falling in? A. Not anything.

BY MR. LAIBLE:

Q. Mr. Boe, there was nothing to prevent the door from falling in, was there? A. Not if the latches were unattached, not a thing. 30

Q. And when you had it up you attached the latches? A. When I took the photograph I attached the latches; yes, sir.

Q. And when you said before that when you got it in position it stood there itself, you mean when you put the latches on? A. No, sir; it stood there before that. When we got on the platform we put it up and let it stay that way without latching it until I got the camera. 40

Harold E. Boe—Re-Direct—Re-Cross.

Q. Did not one of you stay there and hold it until you latched it? A. No, sir.

RE-DIRECT EXAMINATION BY MR. SCOTT:

Q. Mr. Boe, you mentioned taking some other photographs with the door down? A. Yes, sir.

10 Q. These were the other two photographs with the door down (shown to witness)? A. They are.

MR. SCOTT: I offer those in evidence.

(The photographs referred to are marked respectively Exhibit D-3 and Exhibit D-4.)

MR. SCOTT: May it please the court, we have agreed that in case the missing exhibit, I think it is P-2, is found, that Mr. Boe will not need to be called again to identify it.

20 MR. LAIBLE: I will agree to have it offered in evidence without any further testimony.

RE-CROSS EXAMINATION BY MR. LAIBLE:

Q. Those last two photographs are made from the same plate, are they not?

THE COURT: What is the difference between the two?

30 A. No, they are two different exposures; the same position, the camera standing in the same position, but two different exposures.

Q. No difference in the physiology of the car? A. No, sir.

Q. (By Mr. Scott.) Those were all the photographs that you took? A. As I remember now, I think there was only three that I took.

Arthur Reed—Direct.

ARTHUR REED, sworn in behalf of defendant.

DIRECT EXAMINATION BY MR. SCOTT:

Q. Mr. Reed, where do you work? A. I am working for McArthur Brothers, at Port Newark, foreman over the spiking gang.

Q. What are you down there, foreman? A. Yes, sir. **10**

Q. And on September 1, 1916, did you work for Duckworth & Crawford? A. I did, sir.

Q. And you were a member of the crew, or gang, that went down with Mr. Brown to the Lackawanna freight station at Harrison? A. I was, sir.

Q. And Mr. Schwall was one of the crew? A. He was, sir.

Q. Of the other members of the crew were yourself and a party by the name of Watson? A. **20** Watkins, I understood it.

Q. Watson or Watkins? A. Yes, sir.

Q. And Baldy Brahon? A. Yes, sir.

Q. And Schwall? A. Yes, sir.

Q. That composed the party? A. Yes, sir.

Q. When you got down to the freight yard do you remember drawing the truck up near the freight car in which an accident happened? A. Yes, sir; I remember that.

Q. And then you men got in? A. Well, we **30** first threw over our tackles and blockings, and then jumped in after.

Q. And then you got in the car? A. Yes.

Q. Will you tell the jury just what you know about this accident to Mr. Schwall? A. Well, we were unloading a gas furnace for the Edison people, or what we call the Edison lamp people, in Harrison, and, of course, to remove this furnace out of the car you have to take out the end door, and he sent three of us, if I remember correctly, **40**

Arthur Reed—Direct.

10 down to move it. I know Watkins was one of them, because I stepped on his foot and brought about a little argument, and Schwall and myself, and we three started to take it down, but before we got it down, it required the combined efforts of all of us, for the simple reason that these latches was bound in there in such a manner that they wouldn't come out unless they were hammered out.

Q. Do you know who had anything to do with unfastening the latches? A. I, for one, because I had a bar, and I crawled over the top and tried to knock them out.

Q. When you speak of the latches do you mean—  
A. The latches that drop into a steel socket, like.

20 Q. The latches as indicated on the outside in the photograph now in your hands (photograph shown to witness)? A. Yes, sir; those are the ones right there (indicating).

BY THE COURT:

Q. Are they iron or steel? A. Yes, sir; most likely steel.

Q. What is that that they go over? A. That is what I call a hasp.

Q. A hasp? A. Yes, sir; it drops right into this hasp.

30 BY MR. SCOTT:

Q. And those catches, or latches, on the car in question are indicated by a pencil mark at each corner of the car? A. Yes, sir; at each corner of the car, on the upper side.

Q. That is, in this Exhibit P-1. You say you had a bar, or something, in your hands? A. I had a crowbar, trying to work them out.

40 Q. And you started to unfasten them? A. Yes, sir.

Arthur Reed—Direct.

Q. Did you get them unfastened? A. Oh, yes, I got them unfastened.

Q. While you were unfastening them where was Schwall? A. Schwall was lined along there with the rest of them, but what particular position he was standing there I don't know, but he was lined along. The door is 9 feet long that way or more, and that gave room for all of us to be on it and to hold it upright, while I pinched it out of the slot, so as to take it out. The door becomes removed when you take out the latches. And we swung it around the car, facing the machine, to our right, and that brought it about two feet from the slot that it set into, two feet from the end of the car on the right facing the machine, or the smelting furnace. **10**

Q. When was it that the door fell on Schwall? A. The door fell after we all started back to the machine, and we had got—I guess all of them had gotten back except Schwall, and Schwall was by the door, at the lower end, and as he attempted to come by it it fell over on him, I guess. I didn't look back until I heard him holler, and then I looked back, and I saw him under the door. I didn't move as quick as the rest, and Baldy got there about a step ahead of me, or a pace, and then all of us moved the door off of him. **20**

Q. You say Schwall was on the lower end. Which end was that? A. The end nearest to the slot where the door goes in. **30**

BY THE COURT:

Q. There was a slot at the end of the door? A. There is a slot that runs along where the door sets in, and then these latches and this hasp holds it. This slot in below keeps it from kicking in or out; it is a little trench, like; it is a kind of a groove. **40**

Arthur Reed—Direct.

Q. What was it made of? A. It was wood this side, what I saw; I don't know about the outside.

Q. Is that at each end? A. I don't know; I only seen about the end that we took the furnace out of.

10 Q. No. Is there a slot, or groove, at each end of the door? A. No, this slot that I am speaking of runs the whole width of the car, and the door sets in.

Q. In the floor of the car? A. No, it isn't in the floor. Just the same as you take this ruler. This was the floor of the car, and they have drove nails in this groove, and then this door sets down in here. That would stay on the floor of the car now. It is raised from the floor, the whole body, you see. It is in there; that is inlaid in the floor (indicating).

20 Q. Is it fastened onto the floor? A. Exactly; yes, sir.

Q. And how deep was it? A. Well, it couldn't be more than an inch deep; that is what appeared to me.

Q. What is there on the side? A. I don't know; but I know there is something on the sides that holds it from kicking out, and yet I can't say what that was.

30 Q. When you had detached the outside fastenings there was nothing to hold the door in place except this groove an inch deep? A. Yes, but the door of itself wouldn't fall as it was then, but ordinarily there was nothing else to hold it but those latches.

Q. Why would it not fall? A. For the simple reason, it was stuck in there so that we had to pull it out; we had to pry it out after we got the hasp down.

40 Q. Pry it out of the groove? A. Yes, sir; not

Arthur Reed—Direct.

that the groove holds it any, because it was well balanced in standing.

Q. When you got it out what happened? A. Out of the groove?

Q. Yes. A. Well, we lifted one end and swung that and allowed it to set there and rest it.

Q. As you stand on the ground and face the machine which end was that? A. That would be the right side. **10**

Q. Did you raise it up? A. We raised it up to the left and swung it around.

Q. Raised it up like that (illustrating)? A. Yes, sir; raised it out of the groove, and then used the pinch-bar and pinched it around, and the men walked—

Q. Swung it inside or outside? A. Inside of the car.

Q. And was it still fast at the other end? A. No, it was all detached from any fastening. **20**

Q. And when you got it all detached what was there to keep it in place? A. Well, placed it up against the wall. You mean before we turned it?

Q. Yes, after the accident when you got it so that the groove didn't hold it? A. What held it then?

Q. Yes. A. It stood up itself, and yet we steadied it; the men got a hold of it and steadied it while I pinched it out of the groove. **30**

Q. When you pinched it out of the groove where did you put it? A. Up against the side on the left as you are looking out of the car, away from the machine, on the right as you are looking at the machine.

Q. In what direction did it fall? A. It fell to the right as you are looking in from the left.

Q. It didn't fall from its position back— A. No, after we moved it, moved it two feet from one side and nine feet around in a semi-circle, **40**

Arthur Reed—Cross.

you might say, that would bring one end two feet from the end of the car and the top nine or ten feet in a semi-circle around to the end of the car.

Q. In that position was there anything to hold it? A. No, sir; only placing it on a slant at the end of the car; and we misjudged the slant, the angle.

10 Q. You mean to lean it up against the side of the car? A. Yes, sir.

Q. And you say you misjudged the slant? A. Yes, sir.

Q. How did you misjudge the slant? A. If we had laid it properly it wouldn't have fallen over on Schwall; but if you put it that way and walk around the car, a little jar, I suppose, it fell down on Schwall as he came up to the machine.

20 Q. Did you lay it too slanting or too upright? A. Too upright.

Q. Too upright? A. Yes, sir.

CROSS EXAMINATION BY MR. LAIBLE:

Q. You say you got in the car with the rest of the men. What did you do there? A. When we got in there we commenced to knock away the blockings and strappings, and so forth, that held it.

30 Q. How long did that take you? A. I don't know exactly how long, but I know it can't be a great many minutes.

Q. Who else was there? A. Well, there was Baldy Brahon, Bill Brown, Watson, Schwall and myself.

Q. Who was the first man to go to the door? A. I don't know who was the first that got their hands on the door, but I do know the three men that did get their hands on the door.

40 Q. You took the bar? A. Yes, sir; I removed

Arthur Reed—Cross.

the hasp, because I never attempt to unlock any locks on those doors without using something.

Q. Where were the locks? A. The latches were on the upper side, on the outside of the door.

Q. On the outside? A. Yes, sir.

Q. And you unlocked it? A. Yes, sir.

Q. And you say you lifted the door up? A. Yes, sir; I did with the bar.

Q. Why? A. It wouldn't slide over the groove. **10**

Q. Wouldn't it fall in? A. It may have fallen in if somebody gave it enough vibration; but we took it off. There was nothing to fall in of its own accord.

Q. Why wouldn't it fall in? Did you try it? A. It wasn't necessary.

Q. Is it not a fact that you had to lay it flat on the floor of the car to get the machine over it? A. No, sir. **20**

Q. I show you a picture and ask you if that is not the usual way to unlock the door (shown to witness)? A. No, sir; not unless the door has hinges and the hinges were intact. These hinges were intact, because we removed the door bodily. **20**

Q. You say they were intact? A. No, I mean they were not intact.

Q. There were no hinges there? A. No, sir; I didn't have no bother with hinges.

Q. Is it not a fact that the door opened without the necessity of hinges? A. No, sir. **30**

Q. You say you lifted it up? A. Pinch-barred it.

Q. Lifted it up? A. With a pinch-bar.

Q. You took a pinch-bar? A. Yes, sir.

Q. And lifted it up out of the groove? A. Yes, sir.

Q. What kind of a groove was it? A. Not more than an inch—a wooden groove.

Q. Where was it? A. On the inside of the car. **40**

Arthur Reed—Cross.

Q. How wide was it? A. Well, it must have been as wide as the thickness of the door.

Q. And what was on each side of the groove?  
A. I couldn't say what was on each side of the groove. There couldn't be nothing, that I know of, outside of the groove itself.

10 Q. Iron? A. No, on the side I was on it was wood; it may have been iron on the outside, for all I know.

Q. Was this a groove that was cut in the floor of the car? A. No, sir.

Q. Was the bottom of the groove level with the floor of the car? A. The bottom of the groove was attached to the floor of the car.

Q. And you say there was a piece of wood there? A. That composed the groove.

20 Q. You do not know what was on the outside?  
A. No, sir.

Q. But you say you lifted the door up with the assistance of the pinch-bar? A. Yes, sir.

Q. And moved it out two feet? A. Yes, sir; on one end.

Q. And left one end standing where it should be? A. No, sir; left one end where we could swing it.

Q. And did you swing it? A. We all swung it around to the side of the car.

30 Q. How much did you swing it? A. Well, facing the width of the car, nine feet. You can use your own judgment, how far we swung it. We swung it to go to the right side of the car.

Q. Did you swing it all the way over to the right-hand side? A. Yes, sir.

Q. Where was Schwall at that time? A. I couldn't tell you what particular place on the car door he was at.

40 Q. After you got it over there how many steps did you take before the accident happened? A. To where?

Arthur Reed—Cross.

Q. Where you were working, until the time of the accident. A. I couldn't take many steps, because where the machinery was it wasn't more than 15 or 16 feet, but I know I hadn't got back to the smelting furnace when Schwall was on the floor.

Q. How many feet were you from the smelting furnace? A. Not more than six feet, or probably eight; I know I wasn't up to it. **10**

Q. Do you know how many steps you had taken? A. No, sir; I didn't count them.

Q. Which part of the door had fallen on him? A. He fell pretty near the end of the door, just coming towards the machinery, but he had started near the lower end; I am positive of that.

Q. Was he on his back? How was he lying? A. No, he was partly on his back, one leg cramped back. It was such a sight that I turned away from him; I wouldn't look at him. **20**

Q. (By the Court.) Which side of the door was it that fell on him, was it the side that had been on the outside of was it the side that had been on the inside? A. The side that had been on the outside.

Q. (By Mr. Laible.) The side, on the top, running along like that (indicating)? A. What do you mean, the top of the door?

Q. The door was nine feet long, was it not? A. Yes, sir. **30**

Q. I am talking about that nine-foot top. Is that the part that fell on his foot, or was it the end?

A. The front side of the door and the upper edge of the door is what really seemed to have done the injury to him.

Q. That door was how wide? A. The length or the width of it?

Q. The depth. A. Well, they call it a three-board car. Some people call it three feet; I don't know; that is only hearsay. **40**

Arthur Reed—Cross.

Q. You say you had gotten the door up to the side of the car there and laid it there? A. Yes, sir.

Q. Straight up or on a tilt? A. We tried to lay it on a slant, but I suppose we didn't judge it right.

Q. And which way did it fall? A. Inward, toward the center of the car.

10 Q. And Schwall was lying around up toward the end of the car or— A. You mean the lower end of the car or the door?

Q. The door. A. He was lying towards the end of the door, that way, more or less, first; that is what we swung first.

Q. And this part of his body was below the end of the door (indicating)? A. Part of his body wasn't below the end of the door.

20 Q. It was not? A. No, if I am understanding the end that you mean. The door fell in towards this end than he was that end of the door; Schwall was in that fashion when I saw him (indicating).

Q. In the center of the door? A. I couldn't say he was in the center; I imagine he was more this end.

Q. Where were the other men? A. They were all at the machine, but they came back, because we all heard him calling.

30 Q. Which end of the door was Schwall when he fell? A. I don't know; I know he went on by the door, because we walked by the door together.

Q. How far from the door were you when the door fell? A. I should imagine about eight feet; I couldn't say; about half-way between that and the machine.

Q. Then Schwall was half-way between the ends of the door? A. The two ends of the door?

40 Q. Yes. A. I didn't say that; no, sir; he was nearer this end of the door (indicating).

Arthur Reed—Cross.

Q. How far from the end? A. His feet couldn't be more than two feet away from the end.

Q. Then you had walked 10 feet? A. I am judging from him; I say eight feet from the door. That is what I said to begin with.

Q. Well, how far did you walk from him? A. I am allowing, with the two feet that I have added on the other end of the door to where it fell—I am allowing eight feet and two feet. **10**

Q. Eight feet from that end of the door? A. Eight feet.

Q. And that is the end that is nearest to the center of the car? A. Which way, the center, do you mean longitudinally?

Q. Well, the machine was near the center of the car? A. Yes, sir.

Q. And one end of the door was near the machine? A. Yes, sir. **20**

Q. And you were eight feet from that end? A. Yes, sir.

Q. And you walked 10 feet? A. From Schwall, not from the door.

Q. And then the door fell; is that right? A. Yes, the door fell.

Q. And you say you heard a scream and you turned around? A. We all heard it, yes.

Q. And what did you do with the crowbar? A. I placed it somewhere along there, I guess, or maybe I had it in my hand, for all I know. It was something we had to use all day. **30**

Q. Where was Mr. Brown at that time? A. I don't know; I know he was there on the car.

Q. How long did it take you to do all this? A. I have no idea; I can't figure how quick it could be done or how quick it was done.

Q. Did it take half an hour? A. What?

Q. Taking the door out. A. Oh, no. It didn't come out the way a door ought to come out; it was hard to get out. **40**

## Arthur Reed—Re-Direct—Re-Cross.

Q. Why did you want to take it over to the side like that? A. To allow room to take the machine out.

Q. Is it not a fact that you usually run it over a door like that? A. No, not when you are able to take the door out. That makes more work. It is easier to roll it over the smooth surface than to block it over that.

10 Q. How long have you been at that business? A. About ten years, off and on.

Q. You are subpoenaed here to-day by the railroad? A. I understand that.

Q. Have you talked to anybody about this case? A. No, sir; it wasn't necessary. They couldn't find me.

Q. You have not talked to anybody about it? A. Only these people that served the subpoena on me.

20 Q. Did you not talk yesterday to anybody? A. Only to these witnesses, that is all.

Q. Did you make a statement to anybody? A. No.

Q. Did you sign a written statement? A. I haven't signed no written statement to no man.

Q. Did anyone call at the house about the case? A. Yes, a claim agent.

Q. Mr. Boe? A. Mr. Boe and Mr. Douglas.

30 RE-DIRECT EXAMINATION BY MR. SCOTT:

Q. You say you never gave any statement to the railroad? A. I have no knowledge of giving any signed statement.

RE-CROSS EXAMINATION BY MR. LAIBLE:

Q. Did this pinch-bar make a mark on this piece of wood? A. I guess it would.

40 Q. Did it? A. I don't know; I didn't notice at the time.

## Arthur Reed—Re-Cross.

Q. Did you put it under the door? A. The pinch-bar does all that.

Q. What is a pinch-bar? A. It is something like—it has claws.

Q. (By the Court.) You had a pinch-bar, you say? A. Yes, sir.

Q. (By Mr. Laible.) And you say it did not make any mark? A. I don't know that; I didn't take any notice. 10

BY THE COURT:

Q. (Indicating.) Suppose this was a gondola car, and this is the door, standing in its groove. It goes down deeper than it ought to, according to your testimony. What I show you this for is to have you illustrate the way it was got out and the way it was swung. A. (Indicating.) For instance, here is the door and here is the latches. 20  
The door didn't come very readily on account of the groove, so we take the pinch-bar and work it down here between the groove to force it, and then with the combined efforts of the men and the pinch-bar we got this out gradually over the groove. Once we got one edge up from the groove, it was nothing then to get the other end, because you had an opening to put the bar in.

Q. Which end did you get out first? A. The left hand facing the furnace. 30

Q. Go on from that point and show how it was swung. A. (Indicating.) Here, we got it down like this; we worked it away from this groove.

Q. After you get it in that position— A. Yes, then we swung this end around to the side of the car in that manner, and left it leaning up against the car.

Q. Then this surface had been the outside of the door as it stood (indicating)? A. Yes, sir.

Q. And then what happened? A. Then by a 40

Arthur Reed—Re-Cross.

misjudgment of the way it was standing, I suppose, we left it, but Schwall, being at the lower end of it, before he had got past it the car door fell over on him and broke his leg.

Q. Which part of it caught him? A. I should judge about 2 feet from the end.

10 Q. Which end of it, this end (indicating)? A. Yes; this end here. It looked to me about 2 feet from there.

Q. That is what had been the left end? A. Yes, sir.

BY MR. LAIBLE:

Q. So you say the outside of the door fell on Schwall's leg? A. There was no other way for it to fall.

Q. I am asking you. Yes or no? A. Yes, sir.

20 Q. Where did you put the pinch-bar, on the inside or outside? A. On the outside.

Q. Did you lean over the door? A. I was on the outside of the door, on the bumper head.

Q. You were outside? A. I crawled outside.

Q. What did you do after you got the door out of the groove? A. Slid it around; all of us slid it around together.

30 Q. Then you were on the outside and Schwall was next and then the others? A. I don't say he was next, but he was on the door.

Q. They were all on it inside, too? A. Yes, sir.

Q. And then you lifted it up? A. Yes, sir.

Q. And moved it in? A. Yes, sir.

40 Q. And you walked up to the end of the door where Schwall got hurt and then walked about 8 feet more? A. No, I didn't say that; I say I swung the door around and left it by the side of the car; that is the only time I left the door, after I thought the door was properly standing,

Arthur Reed—Re-Cross.

and we left it, and that is the only time I walked away from the door.

Q. Then Schwall got hurt when he was 2 feet from the end of the door? A. Yes, 2 feet from the end of the door, but on the inside of the door.

Q. And nearest to the tank? A. Yes, sir.

Q. And then you walked about 8 feet after that? A. About 8 feet more from the door before the door had fallen. **10**

Q. When you started to move this door in what was the position of the three men? A. All grasped hold of the door—the five of us, rather, was on the door; I am the only man using the pinch-bar; they was holding the door and edging it around while I was working the pinch-bar.

Q. You say that Mr. Brown and the other men were on that door? A. Yes, sir; it is common for us to do that any time. **20**

Q. Were they there that morning? A. Yes.

At one o'clock, P. M., the court takes a recess of one hour.

AFTER RECESS.

MR. SCOTT: I desire to offer in evidence a certified extract of a copy of what is known as "Official Classification, No. 43," filed with the Interstate Commerce Commission on behalf of the defendant railroad company, certified by the secretary of the Interstate Commerce Commission and under his seal, as provided by the act of Congress (handing paper to plaintiff's counsel). **30**

MR. LAIBLE: If your Honor please, I cannot see the purpose of the offer; I do not see the materiality of it.

(After argument the objection is withdrawn.)

(The paper referred to is marked Exhibit D-5.) **40**

Theodore Lypin—Direct.

THEODORE LYPIN, sworn in behalf of defendant.

DIRECT EXAMINATION BY MR. SCOTT:

Q. Mr. Lypin, what was your business on September 1, 1916? A. Car inspector.

Q. How long had you been car inspector before that time? A. I have been car inspector since  
10 1907.

Q. What is the territory that you covered in September, 1916? A. The Harrison yard.

Q. And by "car inspector" what do you mean. What were your duties? A. My duties was to inspect all cars before they get loaded and all the cars in the yard for their safety.

Q. For their safety? A. For their safety to run in the train.

Q. On September 1, 1916, was your attention  
20 called by Mr. Kain, the agent, to an accident happening in the yard? A. No.

Q. In the Harrison yard? A. No, not by Mr. Kain, but I was notified from the yard office.

BY THE COURT:

Q. From the yard office? A. Yes, Mr. Kain telephoned down to the yard office.

Q. In whose employ were you, what company? A. The D., L. & W.

30 BY MR. SCOTT:

Q. You were notified to do what? A. To go and inspect that car that the accident happened on.

Q. After the accident? A. Yes, sir; after the accident.

BY THE COURT:

Q. It was after the accident and on the same  
40 day as the accident? A. Yes, sir.

Theodore Lypin—Direct.

BY MR. SCOTT:

Q. What time did you get down to the place where this car was? A. Well, it was about a little after one.

Q. And when you got there did you see Mr. Boe? A. Yes, sir; Mr. Boe was waiting there for me; Mr. Kain told him where the car was.

Q. And where was the car, on what track? A. **10**  
On track 1.

Q. What kind of a car was it? A. P. L.

Q. Open or box? A. Open, gondola.

Q. Were you present when Mr. Boe took photographs of the car? A. Yes, sir; he took it at the present when I was there.

Q. When you got down to the car did you look at the end doors of the car? A. Yes, sir.

Q. Were both end doors up, or how were they? A. One end door was up and the other was inside of the car, standing up against the side of the car. **20**

Q. Standing up against the side of the car, inside of the car? A. Inside of the car.

Q. Did you and Mr. Boe do anything with the door? A. Yes, me and Mr. Boe shifted the door around nice and easy to get it into its place.

Q. When you got it in its place, what did you do then? A. We put the latches on, and I used a hammer to drive them down. **30**

Q. Did you examine the latches on that door? A. Yes, sir.

Q. And what was their condition? A. The latches was in a first class condition.

BY THE COURT:

Q. This is on the outside? A. On the outside; yes, sir.

Theodore Lypin—Direct.

BY MR. SCOTT:

Q. That car was placed so that it faced east and west? A. Yes, sir.

Q. From Hoboken to Newark? A. Yes, sir.

Q. And when you got down there which door was down? A. The east.

10 Q. When you got down there which was the door that was lying against the side? A. The east end.

Q. Towards Hoboken? A. Towards Hoboken.

Q. With respect to the place where this door was, which side of the car was it up against? A. Up against the north side.

Q. And the north side is which side of the car? A. That is on the lefthand side of the door, from the east.

20 BY THE COURT:

Q. The door was missing from the north side? A. Standing against the north side.

Q. I did not mean to use that word. The car stood east and west? A. Yes, sir.

Q. There was no door on the east end of the car? A. No.

Q. There was one on the west end? A. There was one on the west end, standing up in its right position.

30 Q. In its place? A. In its place.

Q. On which side of the car did you find the door leaning against the side? A. Why, from the east it was on the lefthand side.

Q. That is, as you stood back of the car? A. Yes, sir.

Q. And looked— A. Looked towards Newark.

Q. Looking at the machine, it was on the left? A. On the left.

Q. Or on the right? A. On the left.

40 Q. That would be on the south side, would it not? A. Yes, sir.

Theodore Lypin—Direct.

Q. Not on the north side? A. That is where I made a mistake.

Q. On the south side? A. On the south side.

Q. The north side would be on the right? A. On the right.

Q. You said it was on the north side. A. No, on the left side; that would be on the south side.

BY MR. SCOTT:

10

Q. As you stood in front of the car, the east end of the car, looking into the car, with the door down at the east end, which side did you say the door was up against? A. The left side.

Q. The left side? A. The left side; yes, sir.

Q. Now, I show you a photograph marked D, and ask you if you can point out which side it was on (shown to witness)? A. This is the side it was up against (indicating).

20

Q. On this side that I mark with a cross (marking on photograph)? A. Yes, sir.

THE COURT: You put a cross over the left side.

BY THE COURT:

Q. At this time had the machine been removed from the car? A. Yes, sir.

BY MR. SCOTT:

Q. When you put the door up with Mr. Boe, will you tell us how it fitted in the car? A. Why, it fit right in the place.

30

Q. Was it snug or loose? A. Oh, it was pretty tight; we had to give a good jar to push it down.

BY THE COURT:

Q. This photograph does not show it leaning up against the side? A. No, it does not.

Q. It merely shows which side you say it was leaning up against? A. Yes, sir.

40

Theodore Lypin—Direct.

BY MR. SCOTT:

Q. You say that the latches outside were in good condition? A. Yes, sir.

Q. Now, had you seen that car before that day? A. Yes, sir.

Q. When had you seen it? A. I seen that car at ten minutes to seven.

10 BY THE COURT:

Q. When? A. Ten minutes to seven.

Q. On the same day? A. On the same day.

BY MR. SCOTT:

20 Q. And what was the occasion of your seeing the car at that time? A. Well, when I seen the car the door was up; the car was loaded, some machinery in it; the door was all right; the latches was on. Of course, I never look inside of the car when the car is going to be unloaded.

Q. Did you again examine that car with somebody else that day? A. Yes, sir; with Mr. Hauser.

Q. What did you find the condition to be of the I-bolts, or staples, inside of the car door? A. When I come there at one o'clock I found one staple lying inside of the car, near the middle of the car, and the other one was missing.

30 BY THE COURT:

Q. Where were those staples, as you call them, originally in place, on the outside of the car or the inside of the car? A. The inside of the car.

Q. On the inside of the car? A. Yes, sir.

Q. One staple was on the floor? A. Yes, sir.

Q. And one missing? A. One missing.

40

## Theodore Lypin—Cross.

## CROSS EXAMINATION BY MR. LAIBLE:

Q. Now, Mr. Lypin, you made this inspection, as you say, at ten minutes of seven? A. Yes, sir.

Q. Were there any other cars attached to that car then? A. No, sir.

Q. Close together, were they not, a whole string of cars locked together? A. Yes, sir.

10

Q. And when you made this inspection you just walked alongside of the cars? A. Yes, sir; I looked underneath. I walk alongside of the cars; that is my duty, to do that.

Q. Was it dark at this time? A. No, sir.

Q. Daylight? A. Yes, sir.

Q. And you did not look inside of the car, did you? A. No, sir.

Q. You did not go up on top of it? A. No, sir.

Q. Just walking along? A. Yes, sir. We can see right on the ground; you can see from the ground.

20

Q. But you did not jump inside of the car? A. No, sir.

Q. Does this door fit flat on the floor of the car? A. Yes, sir.

Q. That is, the door— A. It is flat from the inside.

Q. There is nothing obstructing it there? A. No, sir.

30

Q. It runs flat right up to the iron post outside? A. Yes, sir.

Q. There is a plate here (indicating)? A. Yes, si.

Q. And then the door fits right flat on the floor of the car, like that (indicating)? A. Yes, sir.

Q. And this door that you opened is usually laid flat down, and then the stuff is moved over it, is it not? A. Yes, sir.

40

Theodore Lypin—Cross.

Q. And you did not see this car again until one o'clock? A. A little after one.

Q. When Mr. Boe was there? A. Yes, sir.

Q. And those are the only two times that you saw that car that day, are they not? A. No, I seen it about three o'clock in the afternoon again.

10 Q. Well, I meant near the accident. A. No.

Q. And you saw it a third time with Mr. Hauser, did you? A. With Mr. Hauser.

BY THE COURT:

Q. Tell me something more about these staples that you referred to. Where were they when they were in place? A. They were right through the floor.

20 Q. How many of them were there when they were in place? A. How many were there?

Q. How many staples were there— A. Two.

Q. —when they were in place. A. Two.

Q. Where were they put? A. They are connected with the door and go through the floor, and two nuts goes right underneath the sills.

Q. How do they connect with the door? A. The door has got two straps right from the top of the car to the bottom, the bottom of the door.

30 Q. On what, on the door, or on the side of the car? A. On the door. Then the staple goes right through the eye of that strap, through the floor to the bottom.

Q. And how is the door detached from the floor? A. With those staples.

Q. That is the way it is attached. Now, how do you get it loose? A. The only way you could get it loose is to get the nuts off underneath the car and pull them up.

40 Q. A kind of groove has been described by one witness, about an inch deep— A. That is from the outside.

Theodore Lypin—Cross.

Q. —running along for 9 feet, in which, it is said, the door rested. Is there such a groove?

A. It is from the outside.

Q. From the outside? A. Yes, sir.

Q. You found that? A. Yes, sir.

Q. What is that made of? A. What, that groove?

Q. The groove. A. That is a steel plate; it is bolted right to the bottom of the car. **10**

Q. And did the door when in place rest in that groove? A. Yes, sir.

Q. And it was also attached by the staples? A. Yes, sir.

Q. To the floor? A. Yes, sir.

Q. And when it became necessary to unload something it did become necessary sometimes to take the end of the car down, did it not? A. No, sir; they can do it by letting the door down and putting the planks and rollers right over the door. **20**

Q. What did the door hinge on? In putting the door down what did the door turn on? A. There is no hinges on there at all; it drops right down.

Q. It drops down? A. Yes, sir.

Q. Would it drop out of this groove? A. Yes, sir; it would drop out of the groove when you drop it down.

Q. And then what would attach it to the car? **30**  
A. Why, it wouldn't fall no more than about an inch away from the groove, and when you lift the door up again it falls right in its place.

Q. But what would fasten the door to the car? A. Why, the staples.

Q. The staples? A. Yes, sir.

BY MR. LAIBLE:

Q. Mr. Lypin, when you speak of a groove, you mean this iron plate that is outside of the door, **40**

Theodore Lypin—Cross.

do you not (indicating on photograph)? A. Yes, sir.

Q. Now, there is nothing inside of the car, according to this picture, which would form— A. Not inside, no.

Q. —which would form a groove where this would fit in? A. No.

10 Q. When you speak of a groove, it is the fact that there is something that the door fits in like that? A. Yes, sir; and it can't come out.

Q. But it can come out that way (indicating)? A. Yes, sir.

Q. There is no inch groove there? A. No.

Q. And if a witness said there was a groove inside, he was mistaken, was he not? A. Yes.

Objected to.

(Question withdrawn.)

20 Q. There was no board inside of this car, was there? A. What kind of a board do you mean?

Q. Alongside of the door, where the door would fit in, like that (indicating)? A. No.

Q. And when you speak of these bars coming down here, which are fastened with staples, these are the bars that you mean (indicating)? A. Yes, sir.

Q. There is an I-bolt there? A. Yes, sir.

30 Q. And the staple goes through? A. There is a strap right there, and it goes through that strap underneath, through the I-bolt.

Q. It is locked underneath? A. Yes, sir; but that doesn't concern anything about the door falling in.

Q. But it will work around there if it falls in? A. Yes, sir.

Q. It acts like a hinge? A. Yes, but it is not a hinge.

40 Q. Well, it acts like a hinge? A. Yes, sir.

Theodore Lypin—Cross.

Q. And there was no such thing on this car, was there? A. About the staples?

Q. That iron there (indicating)? A. I found one inside of the car pulled out and one missing.

Q. They never lift this door out of these cars and take it away; they usually turn it and lay it flat on the ground? A. Sometimes you have to. The door may be wore down; it may be down an inch or more on the inside. **10**

Q. But you cannot do that if it is locked, can you? A. No, sir.

Q. Then you have to drive it over? A. Yes, sir.

BY THE COURT:

Q. Counsel showed you Exhibit P-2, and I think you pointed out what you said were the staples, or the place where the staples go. Where are they? A. Here is the straps; they go right down, and that strap is bolted on both sides of the car, and that strap has got an I, like that, and that staple goes through the floor, and right down through the floor (indicating). **20**

Q. You notice here a line running to the letter B and another line to the letter A (indicating). A. Yes, sir.

Q. And the staples, you say, run from that line A and B? A. Yes, sir.

BY MR. LAIBLE: **30**

Q. Now, Mr. Lypin, this iron L that you speak of, against the outside of the door, fits tight against the door, does it not? A. Yes, sir.

Q. In fact, it is so tight you cannot hardly get anything in between it? A. Yes, you might get the point of a bar in.

Q. And how wide is the distance between the end of the car and the door (indicating on photograph), this end here? A. About ten inches. **40**

John F. Hauser—Direct.

Q. About ten inches? A. Ten or eleven inches.

Q. You mean this thing here (indicating)? A. No, right here (indicating).

Q. Ten or eleven inches? A. Yes, sir; that is for the men to walk on.

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JOHN F. HAUSER sworn in behalf of defendant.

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DIRECT EXAMINATION BY MR. SCOTT:

Q. Mr. Hauser, you are a car inspector of the Lackawanna Railroad? A. Yes, sir.

Q. And you were on September 1, 1916? A. Yes, sir.

Q. And have been for how long? A. Twenty-five years.

20 Q. And on the afternoon of September 1, 1916, in company with Mr. Lypin, did you examine P. L. car 853,159? A. Yes, sir.

Q. Did you examine the catches on the door of said car? A. Yes, sir.

BY THE COURT:

Q. What time of day, Mr. Hauser? A. Around between three and four o'clock in the afternoon.

BY MR. SCOTT:

30 Q. Which end of the car did you examine, the east or the west end? A. The east end.

Q. Toward Hoboken? A. Yes, sir.

Q. And what did you find the condition of the latches of that car in? A. When I got there the door was placed in position by Mr. Lypin, and Mr. Lypin told me that Mr. Boe—

THE COURT: Never mind what he told you. The door had been placed in position?

40 WITNESS: Yes, sir; it had been placed in position.

John F. Hauser—Cross.

THE COURT: Never mind what he told you, but you may answer the question about how you found the latches.

Q. Did you examine the latches? A. Yes, sir.

Q. And what condition did you find them to be in? A. I found that I used the hammer to knock them out.

BY THE COURT:

10

Q. You found that you had to use a hammer?  
A. Yes, sir.

BY MR. SCOTT:

Q. And what condition did you find them in that day? A. O. K.

BY THE COURT:

Q. They are on the outside of the door, as I understand? A. Yes, sir.

20

BY MR. SCOTT:

Q. Did you inspect the car door to see whether it fitted or not? A. It fits pretty tight.

CROSS EXAMINATION BY MR. LAIBLE:

Q. You did not see that car before, did you?  
A. No, sir.

Q. That is the first time you had seen it? A. Yes, sir.

Q. How did you come to make the inspection?  
A. Well, I was ordered by the railroad company to go down and inspect the car with this other man.

30

Q. Did you take a hammer with you? A. Yes, sir.

Q. Why did you take a hammer with you? A. I always carry a hammer.

Q. And you knocked off these latches, you say, to open the door? A. Yes.

Q. And you say you had to use a hammer to open it? A. Yes, sir.

40

James P. Brogan—Direct.

Q. You usually have to use a hammer in opening the door, do you not? A. Yes, sir; sometimes you can open them with your hand.

Q. You do not know what the condition of the door was before you saw it, do you? A. The condition of that door—

10 Q. Before you examined it that day? A. When I examined it it was all right.

Q. (Question read as follows: "You do not know what the condition of the door was before you saw it, do you?") A. Well, it must have been O. K.—

Q. Answer yes or no. Do you? You did not see it before three o'clock did you? A. No, sir; I did not.

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20 JAMES P. BROGAN sworn in behalf of defendant.

DIRECT EXAMINATION BY MR. SCOTT:

Q. Mr. Brogan, what is your business? A. General foreman of car department, D., L. & W. Railroad.

Q. How long have you been that? A. Eight years foreman; thirty-eight years with them altogether.

30 Q. Are you familiar with railroad cars, the mechanism of them? A. I am.

Q. Are you familiar with what is known as the interchange of cars? A. I am.

Q. With respect to the interchange of cars, Mr. Brogan, between the Lackawanna Railroad and foreign roads, is an inspection made of the foreign cars when they are exchanged? A. There is.

40 Q. Will you tell the jury what the character and nature of that inspection is?

MR. LAIBLE: If your Honor please, I ob-

James P. Brogan—Direct.

ject, unless it can be shown that this car went under that inspection.

THE COURT: That is, of course, the particular point, but I think the witness may testify as to the general practice of the road.

Plaintiff's counsel prays an exception to this ruling of the Court.

Exception noted as ground of appeal. **10**

A. The interchange of freight cars between railroads is regulated by what is known as the Master Car Builders' Association. They meet in convention and determine how cars will be interchanged and what defects will be acceptable and what will not. Some are determined by the Interstate Commerce Commission, as, for instance, you cannot take a car that would have a defect that would endanger the safety of employees. Naturally, it would not be permissible to take such car. But the main object of inspecting cars at interchanges is to see that they are safe for the receiving road. They are the sole judge, and determine if there are any damages for which the delivering road is responsible. **20**

Q. You are familiar with these drop end gondola cars of the Pennsylvania Railroad? A. I am.

Q. If the running part of the car is in good condition and the outside latches of the door are in good condition, will you tell what other, or further, inspection is made if any such car was received by the railroad company? **30**

MR. LAIBLE: I object, if your Honor please, on the ground that this witness cannot testify what a reasonable inspection would be, and that is what the question is practically aimed at. It is calling for a conclusion.

THE COURT: It is undoubtedly a question **40**

James P. Brogan—Direct.

of mixed law and fact as to what a reasonable inspection is, but the witness may testify, I think, to what kind of an inspection is made. If there is a practice of the D., L. & W. Railroad Company, you may state what the practice is.

10 Q. Will you state what the practice is of the D., L. & W. Railroad Company with respect to the receipt and exchange of foreign cars of the type of the Pennsylvania Railroad drop end gondola cars?

MR. LAIBLE: I enter the same objection that your Honor overruled to the other question.

THE COURT: It seems to me to be the same question. Take an exception.

20 Plaintiff's prays an exception to this ruling of the Court.

Exception noted as ground of appeal.

A. With reference to the end door, the judgment of the inspector would determine whether it was safe or not. Just so long as the drop latches were in place the door is perfectly safe. The bottom fastening does not add anything to the safety of the door—

30 THE COURT: I think you are getting away from the question. You are discussing details, and it will be for the jury to determine what was reasonable inspection in any particular given case. You are asked a general question, which is susceptible of a general answer. In general, what inspection is made?

40 WITNESS: In general, a car that is safe to run is accepted by the receiving road, or by the D., L. & W., in this case.

James P. Brogan—Direct.

Q. If the latches on an end door car are in good condition when received by the Lackawanna Railroad, is a foreign car considered safe from such a standpoint?

MR. LAIBLE: I object, if your Honor please.

THE COURT: I think that is objectionable. The moment you go into details you raise questions which are for the jury to settle. **10**  
I sustain the objection.

Defendant's counsel prays an exception to this ruling of the Court.

Exception noted as ground of appeal.

Q. You are familiar, Mr. Brogan, with what is known as the I-bolts, or which have been described by some of the witnesses as the hinges, of these drop end cars? A. I am.

Q. Do you know what the purpose of those I-bolts, or hinges, as they call them, is? A. I do. **20**

Q. Those are there to prevent the door from being taken away, or, if the car is to be unloaded on a coal dumper and turned upside down, they will prevent the door from falling out. But the word "hinge," with reference to that bottom fastening, to my way of thinking, is a misnomer, because it does not answer that capacity (indicating). Assuming that is the end of the car, there is the end gate; it drops down and is lifted up, pivoting on the inside edge. If they are missing, if anything, they make the door safer to a person standing inside. If that is fastened, the only tendency would be for the bottom to tilt out in that direction, which prevents the tendency to fall in more than ever. If they are missing they keep the door from tilting in that position; that is the only position you can get. **30**

Cross examination waived. **40**

Merle R. Reed—Direct.

MERLE R. REED sworn in behalf of defendant.

DIRECT EXAMINATION BY MR. SCOTT:

Q. Mr. Reed, you are general car inspector of the Pennsylvania Railroad? A. I am.

Q. And have been for how long? A. For nine months.

10 Q. And prior to that time were you acquainted in any way with the construction of Pennsylvania cars? A. I have been with them for twelve years; yes, sir.

Q. From a mechanical standpoint? A. Naturally so, my only experience having been in the motive power and mechanical department.

Q. Are you familiar with the construction of cars of the P. L. 853,159 type? A. I am; yes, sir.

20 Q. In the construction of those cars, Mr. Reed, is there any arrangement by which the door is attached to the car floor? A. I didn't understand that question.

Q. In the construction of cars of that type is there any method, or arrangement, by which the door is attached to the car floor? A. The door is attached to the floor by means of two U-bolts, or they have been spoken of here as I-bolts, or at other times as hooks. I call them U-bolts. That is the usual term in mechanical engineering

30 for such bolts, for the reason that they are shaped like the letter U. Those are inverted, and the upper portion engages the iron strap, binding, or fastening the door. The two vertical legs of the bolts pass through the floor, through the nailing strips, and through a steel subsill underneath the car, and the nuts are applied below that subsill, therefore fastening the door to the floor of the car, to prevent its loss or being misplaced.

40 Q. You mean to prevent the loss of the door? A. The loss of the door; yes, sir.

Merle R. Reed—Direct.

Q. Or its being misplaced? A. Yes.

Q. You are familiar with the construction of cars? A. I am.

Q. That are received by other roads? A. Yes, sir.

Q. What is known as the receipt of foreign cars? A. I am, yes, sir.

Q. Will you tell us what is the reason of inspection of foreign cars? **10**

MR. LAIBLE: I object to that upon the ground that it calls for a conclusion, if your Honor please, and upon the further ground that I objected before.

THE COURT: I should naturally suppose that the purpose of an inspection would be to determine whether the cars were in good condition.

WITNESS: That is one of the ideas; that is not the sole object. **20**

THE COURT: I think the witness may be permitted to answer the question fully in his own way.

Plaintiff's counsel prays an exception to this ruling of the Court.

Exception noted as ground of appeal.

A. The cars are inspected in interchange between railroad companies to insure their being safe for movement over the line, safe for trainmen and safe for the lading for which they are designed to carry. That is one object of inspection. Another object is for the railroads to protect themselves against delivering lines or against car owners for defects for which they are not responsible—for which the receiving line is not responsible. Under the M. C. B. rules governing the interchange of cars, there are certain rules laid down making certain defects owners' defects **30**  
**40**

Merle R. Reed—Direct.

and certain defects delivering line defects and certain defects which are not permitted in interchange at all. It is to guard against these things, as well as the safety feature, that inspection is made of cars in interchange between railroads. Also inspection is made in yards of railroads of their own cars that are not in exchange.

10 Q. Now, Mr. Reed, if a car of the type and character of P. L. car 853,159 was delivered to your road, and the running equipment, so far as an inspection could determine it, was in good condition, and the latches on the outside of the drop end doors were in good condition, would your road receive that car?

MR. LAIBLE: One moment.

A. It would.

20 Objected to as calling for a conclusion.  
Objection sustained.

MR. LAIBLE: I move to strike out the answer.

THE COURT: Yes.

Defendant's counsel prays an exception to this ruling of the Court.

Exception noted as ground of appeal.

30 Q. Does the absence of these U-bolts in any way affect the running of the car? A. It does not.

Q. Or the lading of the car? A. It does not.

Q. Where this end door sets at the end of the car, will you describe to the jury the appearance of the end door, the floor of the car, if the door was lifted from it? A. This car is a steel under frame car, having a wooden floor and wooden sides made of plank, three planks, ten inches each, making the total height of the car inside above the floor of 30 inches. The end of the car  
40 is made in the form of a gate; we call it a drop

Merle R. Reed—Direct.

end car; and the end door, as we ordinarily call it, is the end gate. That gate, or end door, is attached to the car by means of these U-bolts, which allows the end door to fold inward onto the floor and lay flat upon the floor, to facilitate shipping certain commodities, such as long timbers, logs, structural steel and fabricated steel works. This door, the end—there are three boards  $1\frac{7}{8}$  inches thick, and on the outside of the end door there is also a  $\frac{1}{4}$  inch steel plate. That plate is put on there to reenforce the end door and form a protection to the wooden door when it is laid on the floor flat and when carrying structural steel and other long material, which would naturally rest upon the car door when the door was on the floor. 10

Q. (By the Court.) Do you mean that the door is shod, so to speak, with this steel plate? A. Yes, sir; on the outside only. There are four straps of iron on this door; two of them are continuous straps, up one side and down the other, located about 18 inches from the end of the door, and which forms a part of the hinge, so called, with the U-bolts, forming the fastening of the door, to the car floor. There are two other pieces on the inside, forming a plate which the bolts bear against that pass through the boards of the door to hold the door together. The door is held together by these iron straps and bolts, and not by any wooden battens or nails. 20 30

Q. Mr. Reed, there has been something said about a groove at the end of the door. Can you tell us anything about a groove at the end of that door? A. One might naturally suspect that there was a groove there, or might call it that. There is on the outside of the car an angle iron, four inches by four inches by one-half, riveted to the top of the endsill against the wooden flooring of 40

Merle R. Reed—Cross.

10 the car. This angle projects about one and seven-eighths inches above the floor level in the original construction, and the bottom end of the drop door rests against that angle iron; it forms a shelf, or an abutment, so to speak, for the bottom end of the door to bear against. Therefore the bottom edge of the door would be ordinarily one and seven-eighths inches below the top of this angle, and to move the door out you would have to get down in between the door and this angle, to get a prying action on the bottom of it, and after it once starts away from that angle it would have the appearance of a groove.

CROSS EXAMINATION by MR. LAIBLE:

20 Q. It would have the appearance of a groove from the outside, Mr. Reed? A. From the outside.

Q. Not from the inside? A. Not from the inside, unless somebody would nail a board in there, or a strip, or something of that sort, in there to hold it.

Q. These cars do not have any boards nailed on the inside, do they? A. They have no boards nailed on, nothing but the board floor.

30 Q. And that is flat and goes right up to this angle iron that you speak of? A. Yes; that is, in the original construction of the car.

Q. And there is no setting in of about an inch down there where the door sets? A. No, not in the original construction. Shippers do sometimes nail battens on the door.

Q. Have you seen a picture of this car? A. No.

Q. I will show you a picture and ask you if there is a board nailed there (photograph shown to witness)? A. No, sir; this picture does not show that.

40 Q. (By the Court.) That is a photograph of

James A. Schwall—Direct.

the inside? A. Yes, sir. These drawings will show you the construction of the car much better than the photograph (producing drawings).

Q. (By Mr. Laible.) Perhaps we cannot understand the drawings as well as the photographs. You are a technical man, and we are not, you see.

A. You can see it very plainly.

Q. When these I-bolts, or U-bolts, that you speak of, are attached to the floor there is no occasion to move the door out, is there? A. No, no occasion to. **10**

Q. The usual way is to take and open the catches on the outside and push the top in? A. Yes, sir.

Q. And that is done from the outside? A. It should be, as a matter of safety.

Q. And when it lays flat they move whatever is in the car over the top of this door? A. They can, yes. **20**

DEFENDANT RESTS.

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JAMES A. SCHWALL, plaintiff, recalled in his own behalf.

DIRECT EXAMINATION by MR. LAIBLE:

Q. Mr. Schwall, when you got up to this door where was Mr. Reed? A. He was about in the center of the car.

Q. Was he on the outside of this door, on the ledge, with a pinch-bar? A. No, sir. **30**

Q. Did he ever have a pinch-bar on that door? A. No, sir.

Q. Did anybody use a pinch-bar on that door? A. No, sir.

Q. Were there ever five men at that door before you were hurt? A. No, sir.

Q. How many men were there before you were hurt? A. After I was hurt all the gang was there.

Q. But up to the time you were hurt how many were at that door? A. None. **40**

William C. Brown—Direct.

Q. Outside of yourself? A. Yes, sir.

Q. And you were 3 feet away from it when the door fell on you? A. Yes, sir.

Q. Was there any pinch-bar used there at all? A. No, sir.

THE COURT: Any what?

MR. LAIBLE: Pinch-bar.

10 WITNESS: Pinch-bar, in order to pry the door up, to let it come in.

Q. Was that part of your tool equipment there? Did you have a pinch-bar there amongst the tools? A. For our regular work, yes.

Q. What did you use that for? A. We use them to pry up the material, to get our blocks under, to get the material out of the car.

Q. Was that door ever turned around before you were injured? A. No, sir.

20 Q. Was it lying up against the side before you were injured? A. No, sir.

CROSS EXAMINATION WAIVED.

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WILLIAM C. BROWN recalled in behalf of the plaintiff in rebuttal.

DIRECT EXAMINATION by MR. LAIBLE:

30 Q. Mr. Brown, Mr. Reed testified that you were one of the men that had hold of this door before Mr. Schwall was injured; is that right? A. No, sir; it is not.

Q. When was the first time that you had hold of this door? A. Just as soon as I heard Mr. Schwall holler that he was hurt, when he hol- lered I jumped from the machine, rrom behind the machine, and helped go back and draw it off of him and swing it around to the side of the car there.

40 Q. Where was the door at that time? A. It was

## Motion for Direction of Verdict.

lying on him at its regular place, across the end of the car.

Q. And do you know whether there was a pinch-bar used there on that door? A. I don't know about the door; I know we had a pinch-bar on the job; I didn't see it used on the door.

Q. Did you see Reed use a pinch-bar? A. No, sir; I did not.

Q. Did you see Reed at any time outside near the door there? A. He wasn't outside; he was inside. **10**

Q. Where was he? A. By the machine.

Q. Near you? A. Yes, sir.

Q. And when you saw Schwall there were there any men around there? A. No, sir; only Schwall under the door, and Baldy got there first, and I was second behind him.

CROSS EXAMINATION WAIVED. **20**

## PLAINTIFF RESTS.

MR. SCOTT: If your Honor please, I desire to make a motion for the direction of a verdict. I move for the direction of a verdict, and will state my grounds to the Court.

First, I ask that the Court direct a verdict in favor of the defendant because the railroad company at the time and place of the happening of the accident owed no duty to the plaintiff. The car having been delivered to the Edison Company, the invitation to go upon it to the plaintiff was that of the Edison Company, and for the injury happening to the plaintiff at that time, the duty, with respect to the place where the plaintiff was invited by the Edison Company, the car being in possession of the Edison Company, the duty owed to plaintiff was that of the Edison Company, and not the railroad company. **30**

Second, that even though the Court should de- **40**

## Motion for Direction of Verdict.

termine that the car had not been delivered to the Edison Company, and was not in the possession of the Edison Company at the time of the happening of the accident, the defendant violated no duty to the plaintiff. Neither is there any proof of actionable negligence against the defendant

10 Third, that the proximate cause of the accident was the putting of the door in the position and condition that it was shown to have been put by Mr. Reed and other men, and whether there was negligence or not does not concern the defendant company from a legal standpoint, because it would not be responsible to the plaintiff for the acts of Mr. Schwall's fellow servants.

Fourth, on the ground that the plaintiff himself assumed the risk of this injury to him.

20 THE COURT: Just what do you mean by that?

MR. SCOTT: That, even assuming that the situation was such as Mr. Schwall testified it was, that in going toward the door at the time and in the manner he said he did, that the probability of injury was present to Mr. Schwall's mind, and that therefore, if anything happened while he was going there, he assumed it.

THE COURT: That is, he was negligent?

30 MR. SCOTT: Negligent, yes.

THE COURT: I shall deny the motion.

Defendant's counsel prays an exception to this ruling of the Court.

Exception noted as ground of appeal.

Mr. Scott sums up for defendant.

Mr. Laible sums up for plaintiff.

---

40 ADJOURNED to January 10, 1918, at ten o'clock  
A. M.

**Charge.**

THIRD DAY.

Thursday, January 10, 1918.

Met pursuant to adjournment.

Present, counsel as before stated.

The Court charges the jury as follows:

ADAMS, J.

**10**

Gentlemen of the Jury. This action is brought by James A. Schwall against the Delaware, Lackawanna & Western Railroad Company to recover damages for an injury to his person received, as he alleges, in consequence of the failure of the company to perform its duty to him on the 1st of September, 1916.

There are certain admitted facts which may be referred to at the outset. Mr. Schwall was not an employee of the railroad company; he was in the employ of the Edison Lamp Company, of Harrison. It appears that a tank, a ponderous metal machine, or apparatus, weighing about six tons, had been consigned from some point west of Buffalo on the line of the Pennsylvania Railroad to the Edison Lamp Company, in Harrison, coming on the line of the Delaware, Lackawanna & Western Railroad Company at or near Buffalo. It was shipped in a car which formed part of a freight train in which there were a number of other cars. The particular car in which it was shipped was an open car of the type called by the railroad men a gondola car, and was the property of the Pennsylvania Railroad. Mr. Asa Duckworth, the general manager of the Duckworth-Crawford Company, was notified by the Edison Company that the machine had arrived, and he sent his foreman down to look at the car and get the dimensions of the machine,

**20****30****40**

## Charge.

and then on the next day, the day of the accident, the 1st of September, 1916, he sent down a gang of five men with a wagon drawn by three horses, to bring up the tank. The men were all in the employ of the Edison Lamp Company. They drove up alongside of the car and boarded it, and proceeded to block the machine up and get ready to get it out of the car, over planks and rollers, at the end, closed by what, according to one of the witnesses, is called an end gate. It has generally here been called a door. The door was about 9 feet long, extending from one side of the car to the other, weighing 500 or 600 pounds, made of heavy boards and some iron, and bolted together, or fastened together, in a ponderous way. The witnesses have described two appliances, or two different kinds of apparatus, one on the outside of this door and the other on the inside of the door. On the outside were what the witnesses have called latches—a contrivance by which a metal strap passed over something in the way of a hasp, and so fastened the door—one of these being on one side and the other on the other. The photographs illustrate the matter. On the inside there were what are called hinges—not hinges in the ordinary sense of the term, but in a car of this type, fully equipped, there would be two I-bolts, or U-bolts, something in the shape of the letter U, connecting the bottom of the gate, or door, with the floor of the car, descending into it, and connecting with a steel plate which formed part of the base of the floor, as I understand it. The purpose of this connection is said to have been two-fold: to prevent the gate from getting loose in case the car was turned upside down on a coal dump, or to prevent its getting away from the car under any other circumstances.

There is one fact which is not disputed; that

## Charge.

this door, as we shall call it, fell on the right foot of the plaintiff, breaking both of the bones of the leg below the knee. It was a compound fracture, not injuring the ankle joint itself, but limiting its motion by taking away about three-quarters of it, according to one of the witnesses. The ability to raise and lower the foot was diminished, although not wholly lost. It is of that injury that the plaintiff complains, and he attributes his injury legally to the Delaware, Lackawanna & Western Railroad Company, against whom he has brought the suit, and the problem is whether the facts justify the conclusion that legal liability exists in favor of the plaintiff and against the defendant.

10

Two questions suggest themselves: How did the door fall? Why did the door fall? The plaintiff says he does not know why it fell. He knows how it fell. The falling of the door is the thing to be explained and accounted for by the testimony in the case, so far as an explanation is afforded by the testimony.

20

How did the door fall? In answering this question we consider the testimony of Mr. Schwall himself and of the other men who were there, so far as they have been produced in evidence. They were Mr. Brown, the foreman; Baldy Brahan, Schwall himself; Arthur Reed, who was called as a witness for the defendant, and there was a fifth man, who has not been called. I understand his name to be Watson or Watkins. I do not remember that his absence has been accounted for. At any rate, he has not been a witness.

30

Bearing in mind that the question just now is, How did it fall? let us see what Mr. Schwall says about it. He says that the gang was on the car, "and we were told by Mr. Brown, the foreman, to release the door on the end. The door was held up

40

## Charge.

by hooks, one on each side". He is evidently speaking of what I have called latches. "Hooks and clamps on the outside and rings like a hinge on the inside. Bolts go into the floor. The door was up in position. As far as I could see, it was held fast. I looked at it from the inside. When the door is released from the hooks it will drop about three feet. The door is about three feet high. It fell on my right leg and broke my leg at the ankle. The door laid flat on the floor. It weighed 500 or 600 pounds. There were no hinges on the inside." There were no other men there besides the gang of whom he was one. "I was going down to release the locks on the door"; that is, the latches. He says that as he walked down, no other man being near him, the door fell. On cross examination he said, "I did not see any one loosening the door. Someone might have done it without my knowledge."

Mr. Brown, the foreman, says: "I told three men to take the door down." I think he said he did not remember what three men they were. Schwall apparently was one of them. "I heard a holler, and the door was lying on the plaintiff, lying on his leg. It was loose at the top and the bottom. There was no fastening to the floor. You could take it up and move it around. I told them to open the door to get the machine out. I saw none of the railroad men there until after the accident. We lifted the door and sent for an ambulance. I called my boss up on the 'phone. The bottom of the door was about a foot away"; that is, the bottom of the door had got away about a foot from the place where it would have come down when erect. Mr. Brown evidently did not see the accident itself.

Baldy Braham said that he went with Brown and Bert Schwall and Watson, I think he called

## Charge.

the other man, pulled up to the car and blocked the machine up. He says: "I did not see Schwall hurt. He called for help. I got there first." On cross examination he said: "I was not one of the three men whom the foreman told to take the door down."

This is the testimony that comes from the men who composed the gang, or the bunch of men, who were sent there to do this job, and their testimony, most of which comes from Mr. Schwall, as to the circumstances of the injury is that as he was walking toward the end of the car, which was about 15 feet away from the machine, the door, which was standing upright, suddenly fell. That is how it fell. **10**

Now, why did the door fall? Arthur Reed, another of these men, whose testimony gives an account of the transaction, tells both how it fell and why it fell, from his point of view. He says that he was one of the men who were sent to take the door down. He said he climbed onto the outside of the car with a hammer and knocked the latches loose, and then with a small crowbar he worked at the bottom to get that loose, as it was fast to something that he described as a groove. He described the groove as being of wood and on the inside. The testimony of one of the inspectors of the company is that there was no groove on the inside, but there was something that might look like a groove from the outside, formed by an angle iron. I think the photographs may throw some light on that subject. At any rate, whatever it was, according to his account, he finally got the left end, the end that would be left as he stood at the end of the car and faced toward the tank, loose, and that was lifted up, and then the men who had hold of it—(Brown said he was not one of those who had hold of it)—swung it **20**  
**30**  
**40**

## Charge.

10 around and finally set it up against the right-hand side of the car, leaning against the right-hand side of the car, and that it fell from that position, and he thinks that it fell because they made a mistake and set it up too perpendicularly, not giving it enough slant, and as it fell it caught Mr. Schwall, who was pretty well over toward the end of it, nearer to the machine. That is Mr. Reed's account of both how and why it fell. You see, it is radically different from Mr. Schwall's account of why it fell.

20 It is evident that, unless you reject Arthur Reed's account of this occurrence, your verdict must be for the defendant. I say that unless you reject Arthur Reed's account the verdict must be for the defendant, for, if his statement is correct, or if the jury deems his account to be as probable as the case made by the plaintiff, then the plaintiff's case fails, because, according to Arthur Reed, the fall of the door was proximately and immediately and directly due to the employees of the Edison Lamp Company, these five men, or some of them—if not to their negligence, at any rate to their conduct—and not proximately and immediately due to any act of the Delaware, Lackawanna & Western Railroad Company or its employees. Therefore it is necessary to consider Mr. Reed's story, because if he is right this suit cannot be maintained.

30 But suppose that the jury rejects Arthur Reed's account of the matter, how then will the case stand? There you come back to the question, Why did it fall? That question the plaintiff himself says that he cannot answer; he can only tell how it fell. Assuming that it fell as he says it did, why did it fall? The plaintiff's case, the case that the plaintiff asserts, is that the door, because  
40 of the equipment of the car, was defective in a

## Charge.

certain respect, a respect mentioned in the plaintiff's complaint, to which I shall refer, and that reasonable care in inspection was a duty of the railroad company, and would have informed the company of the existence of this particular defect, upon which it became the duty of the company to remedy the defect within a reasonable time.

What is the particular defect that the complaint asserts? It is not anything about the latches on the outside; it is something about the hinges on the inside. After asserting that the accident occurred, the complaint goes on to say this: "That the said injuries were caused through the negligence of the said Delaware, Lackawanna & Western Railroad Company in using a freight car known as a gondola freight car, which was in a defective and negligent condition, and that the door of the said freight car through which the plaintiff and other employees of the Duckworth-Crawford Company were obliged to remove the said tank was in a defective and destroyed condition, in that hinges on said door were in a defective and deteriorated condition. That the plaintiff while lawfully in the said car, and while endeavoring to remove the said tank, was injured by the door of said car falling upon him as aforementioned by reason of its negligent condition."

The Duckworth-Crawford Company was the employer of Mr. Schwall, and that company was employed by contract with the Edison Company to remove the tank?

MR. LAIBLE: Yes, sir.

THE COURT: They were employees of the Duckworth-Crawford Company, who were acting under the instructions of the Edison Company?

MR. LAIBLE: Yes, sir.

THE COURT: "That the plaintiff while lawfully

## Charge.

in the said car, and while endeavoring to remove the said tank, was injured by the door of said car falling upon him as aforementioned by reason of its negligent condition"—by reason of the hinges being in a defective condition. That is a question of fact. Were the hinges in a defective condition? Secondly, Did that fact occasion the fall of the door? Thirdly, Did the company, under the circumstances, have a duty of inspection for the purpose of remedying any defects that might naturally be injurious to any persons who were rightfully on the car? And these men were rightfully there.

What is the rule as to inspection? I adopt the rule laid down in a Massachusetts case, *Ladd v. New York, New Haven & Hartford Railroad Company*, 193 Mass., 359: "A railroad company which undertakes to deliver freight to the consignee from the car in which it was transported is bound to exercise ordinary care to have the car safe for those who properly resort to it to receive the property." It is not a guaranty of safety. The obligation is "to exercise ordinary care to have the car safe for those who properly resort to it to receive the property, and it is immaterial that the car in fact is the property of another corporation." You will notice that this car was not the property of the Delaware, Lackawanna & Western Railroad Company; it was the property of the Pennsylvania Railroad Company; but that fact, I think, makes legally no difference whatever. If in this case that car had been the property of the Delaware, Lackawanna & Western Railroad Company, the company would have been under an obligation to make reasonable inspection, and precisely the same obligation was incumbent upon the Delaware, Lackawanna & Western Railroad Company if the car was what is called a foreign

## Charge.

car, the car of some other company. When that car came on its road at Buffalo the obligation attached to make proper inspection for the purpose which I have indicated.

Why did this door fall? Did it fall for the reason assigned in the plaintiff's complaint? You cannot broaden the complaint. Did it fall because there were no hinges, or, rather, did it fall because the hinges were defective? **10**

The burden of proof is on the plaintiff; that is to say, it is for the plaintiff, who comes here to assert a claim, to make it out by what shall appear to you to be the greater weight of the evidence, the good, reliable evidence in the case.

Three questions of fact arise: First, Were the hinges in fact defective? Secondly, If they were, did that defect in the hinges occasion the fall of the door? Thirdly, If this is so, was the danger of it falling from that cause one which the Delaware, Lackawanna & Western Railroad Company, in the exercise of ordinary care by inspection, should have discovered, and, having discovered, should have prevented? Unless you say Yes to all these propositions you cannot render a verdict for the plaintiff. If you resolve them in the affirmative, if you do say Yes to them, and put the accident as a result upon the condition of the hinges as a cause, and find under the evidence no other cause co-operating or operating to produce that result, then the plaintiff's case is made out. **20**

What is the testimony as to inspection? There is some that comes from officers of the company. Mr. James P. Brogan is in the car department of the defendant company. He says: "Inspection is made when the cars are received. Inspection is for the receiving road to see whether there is anything for which the delivering road is responsible." **30**

## Charge.

That is, the inspection made at Buffalo was to ascertain whether there was any defect for which the Pennsylvania Railroad Company, which was the delivering road, would be responsible. If such defect were disclosed, the Delaware, Lackawanna & Western Railroad Company would find it out at that point. "I-bolts are to prevent the door from being taken away, or on a coal dump to prevent it from falling out."

Mr. Theodore Lypin, an inspector for the Delaware, Lackawanna & Western Railroad Company, says that on September 1st, the day of the accident, he was notified to inspect the car after the accident. He says: "I got down a little after one o'clock and I was present when the photographs were taken. One end door was up and the other was standing against the side." I suppose that means the side of the car. Two persons whom he mentions—my notes do not tell me who they are—"took it around nice and easy. The latches"—on the outside, that is—"were in good condition. The door on the east end"—that is, this end—"was lying against the side." That was when he got there, after one o'clock, the accident having happened between eight and nine o'clock. "It was up against the left, or south, side of the car." You will remember that Mr. Arthur Reed's testimony was that it was taken to the north side of the car. "It fitted in place. I saw the car door at ten minutes to seven on the same day." That was before the accident. "Mr. Hauser was with me at one o'clock. I found one staple on the floor and one missing." The testimony is that there were two of these I-bolts, or staples, which when a car of that type was properly equipped, connected the bottom of the door with the floor. At one o'clock Mr. Lypin says that he found one of those missing and one on the floor. Why was it that one of those was missing?

**Charge.**

Mr. John F. Hauser, a car inspector of twenty-five years' experience with the Delaware, Lackawanna & Western Railroad, says that he examined the car on September 1st, between three and four o'clock in the afternoon. That was the day of the accident. He says: "The door at the east end had been placed in position. The latches were on the outside. I had to use a hammer to knock them out." That is what Arthur Reed said he had to do that morning. "I never saw the car before."

10

Now, to state it again, the point at issue is the allegation of the complaint that the fall of this door upon the foot and leg of the plaintiff was due to the fact that the hinges of that door were in a defective and deteriorated condition. The plaintiff testified that there were no hinges; he also testified that the hinges would not be visible from where he lay if they had been there. If you resolve this question in favor of the plaintiff, you will proceed to consider the question of the damages to which he will be entitled. If you do not reach that conclusion, if you do not attribute the fall to that cause, but to some other cause—it is not necessary to inquire what other cause—the plaintiff has not made out his case, and the defendant is entitled to your verdict. Of course, I need not say, or I do not have to say, that the fact that the plaintiff is a humble man and the defendant is a powerful corporation has nothing to do with the legal aspects of the case; it throws no light on the question of liability.

20

30

That which a person injured by another may recover, if he has shown his injury to result from the legal fault of the other, is compensation. In the case of a physical injury that includes pain; it includes physical disability, past, present and probable in the future, and it includes any outlay

40

## Charge.

made or liability incurred from that cause and from no other cause. Mr. Schwall was in the receipt of \$13.50 a week, if I remember correctly. He was a workman, and he testifies that he has done no work since, and his physician says that he is not capable of doing any active work, but that he might get along with a watchman's duties, which would not require much moving about. He is, unfortunately, already crippled in the other leg; he has a part of an artificial leg below the knee on the left leg; but he has been able to get along with that for some years. Of course, he is not as good a man as he would be if he had a good left leg, but he has been an efficient workman, even with that disability, and now, with this added injury to his right leg, it is evident, of course, not that he is incapable of earning something—  
10 and a man is bound to minimize his injury and loss by doing whatever he can—but that his earning power is, no doubt, impaired. I understand that he has lost his job. The question is, What is fair compensation, in the first place, for his pain and suffering, his physical injury and disability, his loss of wages, past and probable in the future, and recompense for what the accident has cost him or will cost him? Dr. Mitchell's bill is \$100, and he says the hospital bill is another \$100. If there are any other money items, I do not remember them. Those are the things to be taken into account in case you reach the conclusion that the plaintiff has established his claim. If you do not reach that conclusion, it will not be necessary to give any attention to the subject of damages.

I omitted to say that I have received from the learned counsel for the defendant certain requests to charge. I shall not read them, because I have, for various reasons, concluded not to charge any,  
20 of them, but to deny them all, except the seventh:

## Charge.

"If you believe the testimony of the witness Arthur Reed as to how this accident happened, your verdict must be for the defendant company."

The jury retires.

MR. LAIBLE: If your Honor please, I wish to take an exception to your Honor's charge wherein your Honor states that the jury cannot take into consideration any other evidence of negligence except that charged in the complaint. 10

Exception noted as ground of appeal.

MR. SCOTT: I desire to take exception to your Honor allowing the jury to assume, for the purpose of the determination of this action, that the plaintiff was lawfully in the car in question at the invitation of the defendant company.

Exception noted as ground of appeal. 20

MR. SCOTT: I desire to except to the rule of law with respect to the inspection of the car which the Court charged, basing it upon the decision in 193 Massachusetts.

Exception noted as ground of appeal.

MR. SCOTT: I also except to what the Court said thereafter with respect to the fact that the car in question was a foreign car made no difference with respect to the duty of the defendant. 30

Exception noted as ground of appeal.

MR. SCOTT: And I desire to except to the Court's leaving to the jury in its charge the determination of the question whether by an inspection the defect in question was discoverable, inasmuch as the testimony in the case is uncontradicted that the defect charged in the complaint with respect to the defective hinges was not visible from the outside of the car. 40

## Charge.

Exception noted as ground of appeal.

MR. SCOTT: And I desire to take exception to the statement of fact by the Court that the plaintiff prior to the accident in question had been an efficient workman.

THE COURT: Did not Mr. Duckworth say so?

10 MR. LAIBLE: That was the testimony of Mr. Duckworth.

Exception noted as ground of appeal.

MR. SCOTT: And I desire to take exception to the Court allowing the jury to determine the hospital bill as a legal liability in this case, as the evidence does not warrant that the liability is one which Schwall would be primarily liable for or chargeable with.

20 Exception noted as ground of appeal.

THE COURT: Mr. Duckworth said, "I have known him for ten years, and he was a good worker." That is all the evidence there is.

## DEFENDANT'S REQUESTS AND EXCEPTIONS.

Defendant's counsel respectfully requests the Court to charge the jury as follows:

30 (1) In this case the railroad company's duty to the consignee, the Edison Company, was one merely of transportation. The car involved in this suit was received by it loaded and undertook to haul it to a stated destination; having done that its duty to the Edison Company and the plaintiff, who may be considered its agent, ended, and in view of the fact that the injury to the plaintiff did not occur during the transportation of the car, your verdict must be for the defendant company.

(Denied.)

40 Defendant's counsel prays an exception to

**Charge.**

the refusal of the Court to charge as requested.

Exception noted as ground of appeal.

(2) I charge you that the car involved in this suit was at the time of the accident in possession of the Edison Company, and that it was the Edison Company, not the railroad company, that invited the plaintiff to go upon the car involved, and for the injury to the plaintiff the Edison Company may be, but the railroad is not liable. **10**

(Denied.)

Defendant's counsel prays an exception to the refusal of the Court to charge as requested.

Exception noted as ground of appeal.

(3) If you believe there was no arrangement or agreement or obligation on the part of the railroad company to unload the car involved in question, then its duty to the Edison Company ended when it placed said car on its public delivery for delivery, and it owed no duty or obligation to plaintiff, as the plaintiff was invited to board it by the Edison Company, not the defendant. **20**

(Denied.)

Defendant's counsel prays an exception to the refusal of the Court to charge as requested. **30**

Exception noted as ground of appeal.

(4) I charge you that the Edison Company at and at least for an appreciable length of time prior to the accident to the plaintiff was in possession of the car on which this accident happened, and that for an accident happening to the plaintiff under such circumstances there can be no recovery. **40**

## Charge.

(Denied.)

Defendant's counsel prays an exception to the refusal of the Court to charge as requested.

Exception noted as ground of appeal.

10 (5) Even though you should believe that the proximate cause of the accident was due to the alleged defective hinges on the car door, I still charge you that your verdict must be for the railroad company because it is uncontradicted that the alleged defective hinges were not observable from an inspection from the outside of the car, for the defendant could only be held liable for a defect discoverable by such an inspection of the car as it was under a duty or obligation to do with respect to or for the safety of its employees in transporting said car over its line, and the lad-  
20 ing contained in said car.

(Denied.)

Defendant's counsel prays an exception to the refusal of the Court to charge as requested.

Exception noted as ground of appeal.

30 (6) The defendant railroad company was under no duty or obligation to inspect the inside or interior of the car in question either when it received it or when it placed it on its delivery track for delivery to the Edison Company.

(Denied.)

Defendant's counsel prays an exception to the refusal of the Court to charge as requested.

Exception noted as ground of appeal.

40 (7) If you believe the testimony of the witness Arthur Reed, as to how this accident happened, your verdict must be for the defendant company.

**Charge.**

(Charged.)

(8) For any defect in the interior or inside of the car in question not discoverable by a proper inspection from the outside of the car, in any way contributing to the fall of the door, the defendant company is not liable.

(Denied.)

Defendant's counsel prays an exception to the refusal of the Court to charge as requested.

**10**

Exception noted as ground of appeal.

(9) The uncontradicted evidence is that the door of the car was properly latched a short time prior to the accident, and in view of that fact you cannot find the defendant company liable, even should you believe the plaintiff's story that he was injured because said door was unlatched and also because said hinges on said door were defective, because the defendant was under no obligation or duty to watch or guard against said door latches being unlatched, and there being no proof that said doors were unlatched by any one connected with or employed by the defendant company.

**20**

(Denied.)

Defendant's counsel prays an exception to the refusal of the Court to charge as requested.

**30**

Exception noted as ground of appeal.

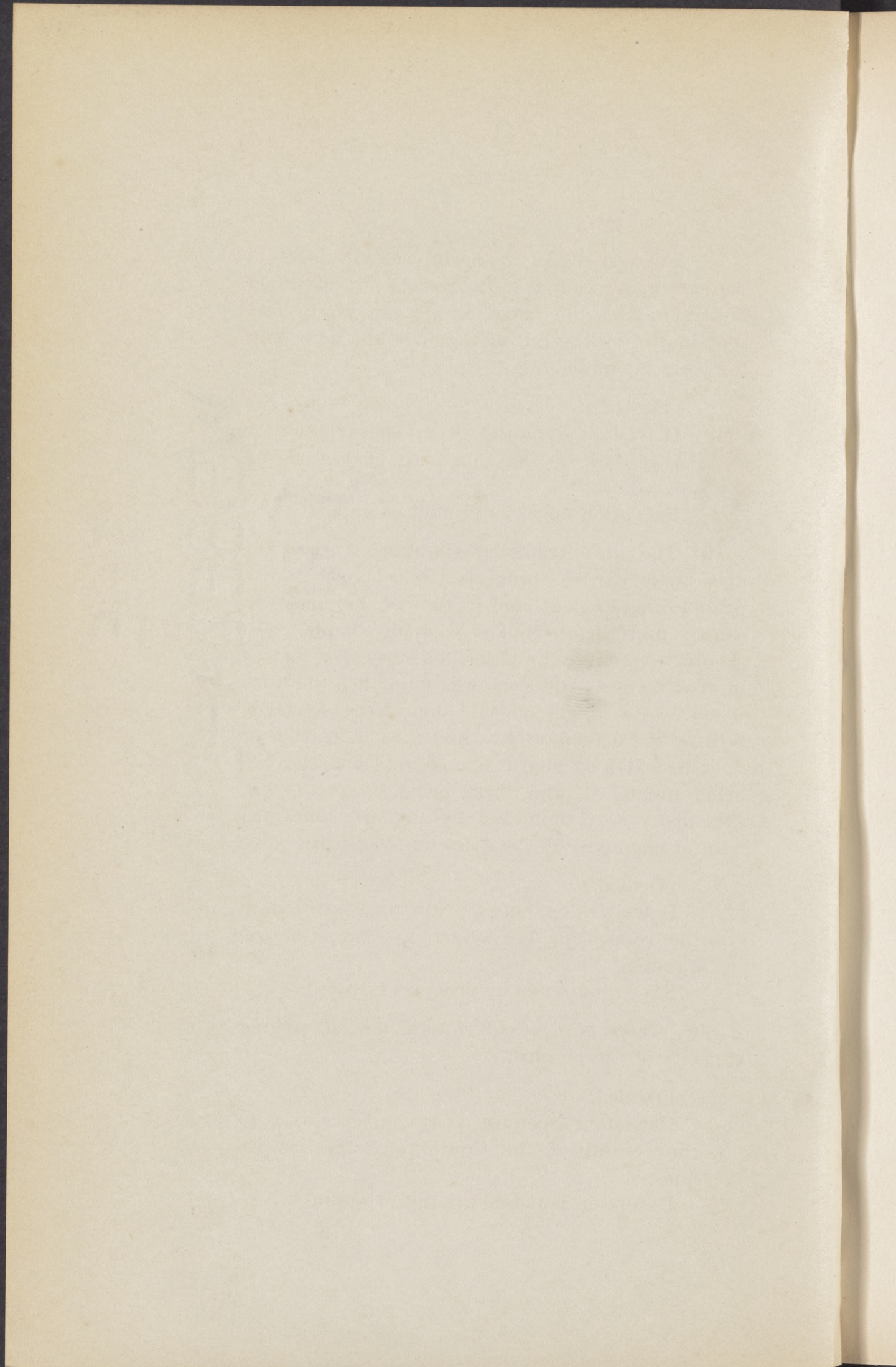
(10) There is no proof of total loss of earning capacity of the plaintiff.

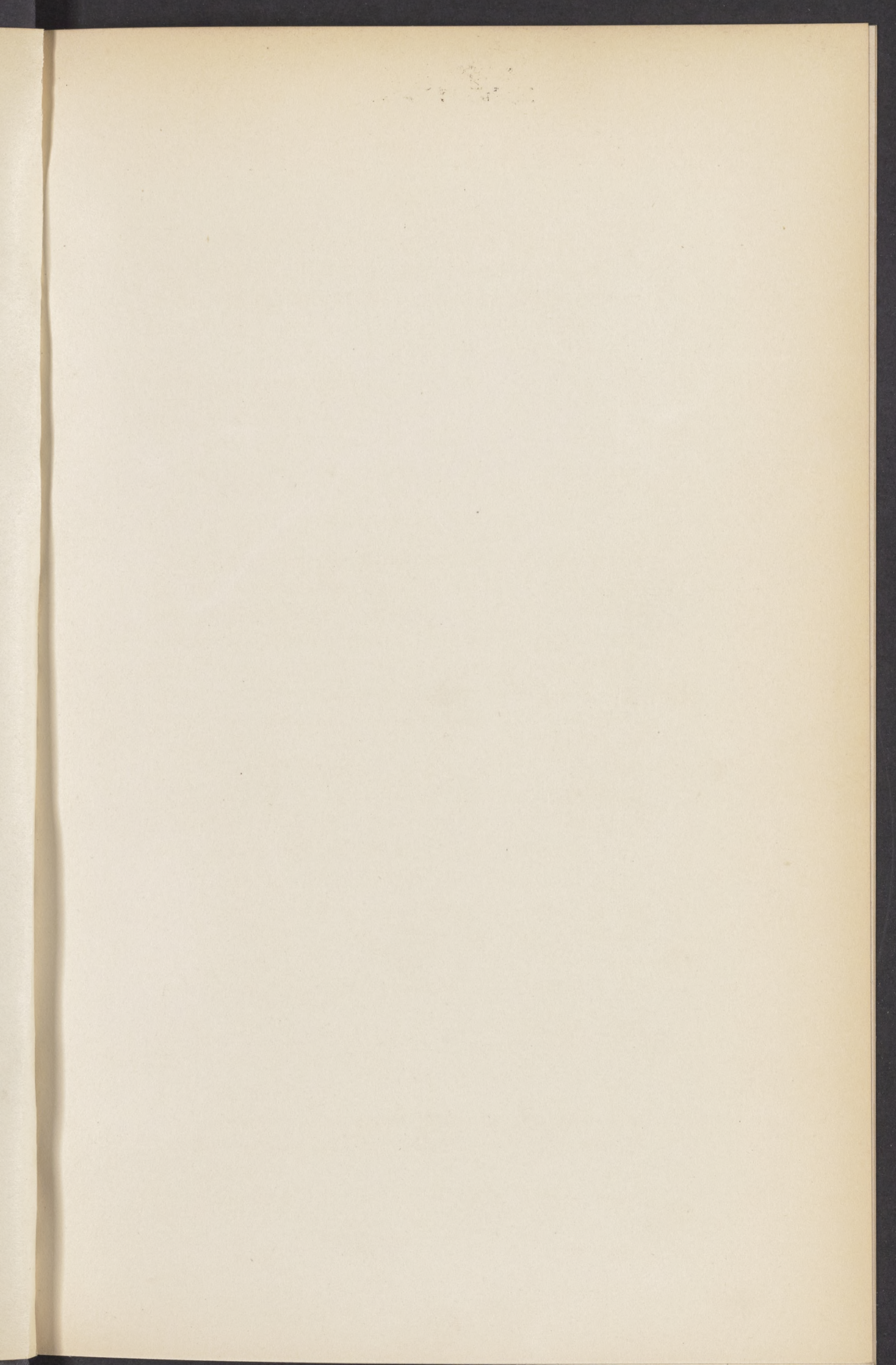
(Denied.)

Defendant's counsel prays an exception to the refusal of the Court to charge as requested.

Exception noted as ground of appeal.

**40**





**Exhibit P-1.**

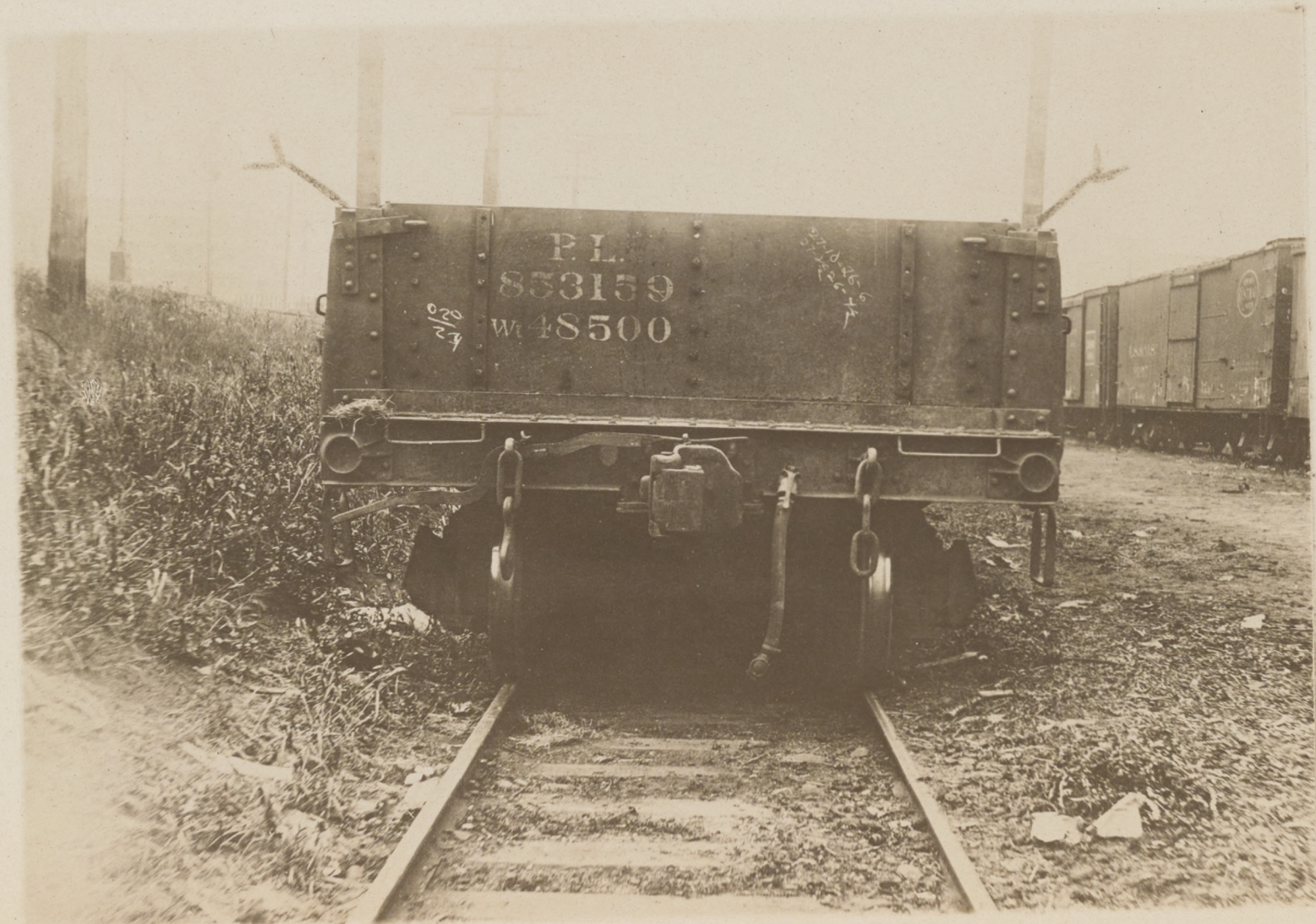
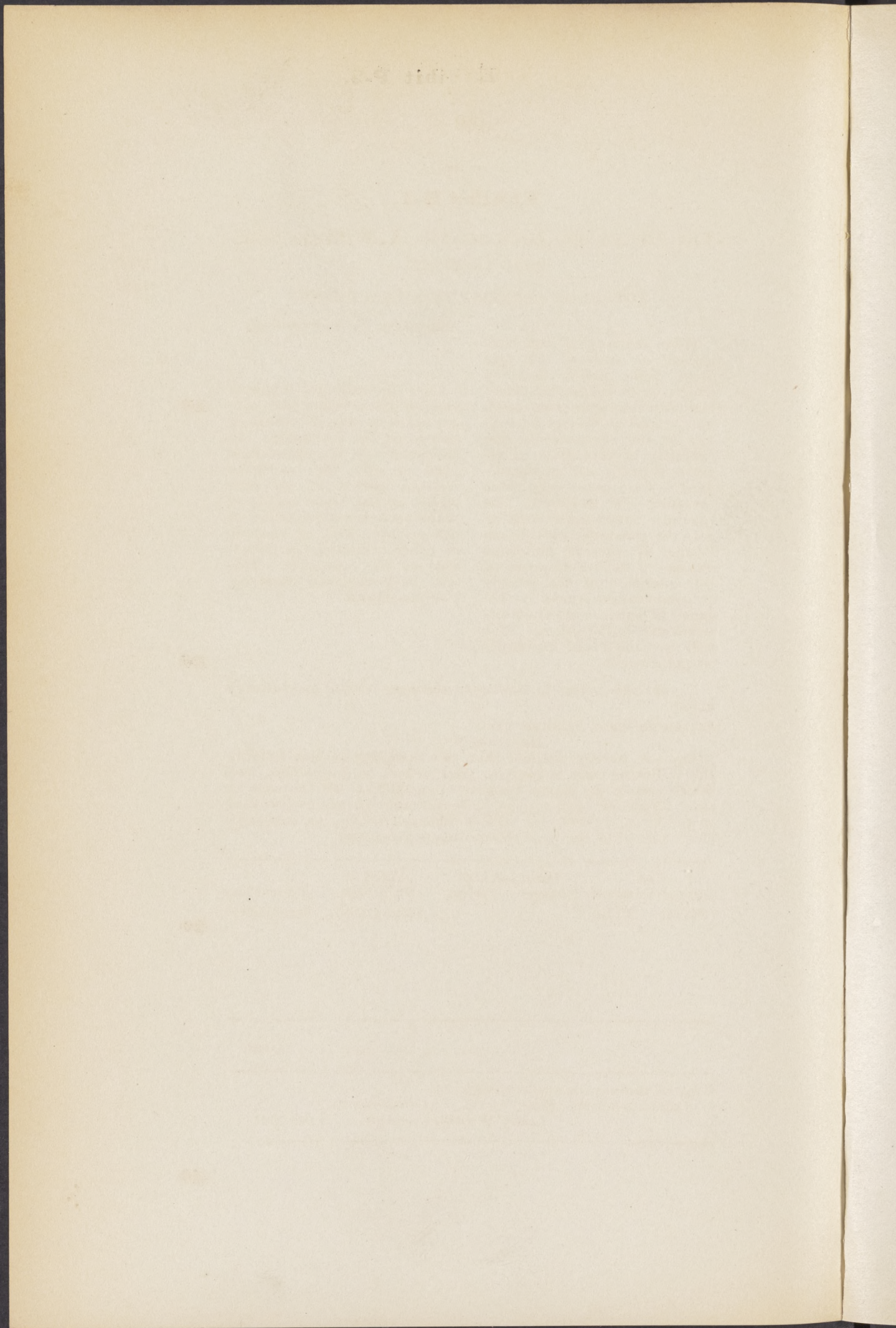




Exhibit P-2.



**Exhibit D-1.**

**THE DELAWARE, LACKAWANNA & WESTERN RAIL-ROAD COMPANY.**

**NOTICE OF CONSTRUCTIVE PLACEMENT.**

Harrison, N. J., 8-30—/16.

When delivery of cars con- signed or ordered to any other than public delivery tracks or to industrial inter- change tracks cannot be made, on account of the act or neg- lect of the consignee or the inability of consignee to re- ceive, delivery will be consid- ered to have been made when the cars were tendered. The carrier's agent must send or give the consignee written no- tice of all cars he has been unable to deliver because of the condition of the private or interchange tracks or be- cause of other conditions at- tributable to consignee. This will be considered construc- tive placement.

Cars for loading will be con- sidered placed when such cars are actually placed or held on orders of the consignor. In the latter case the agent must send or give the consignor written notice of all cars which he has been unable to place because of condition of the private track or because of other conditions attribut- able to the consignor. This will be considered construc- tive placement.

**10**

**20**

*Render this notice in Duplicate and take receipt as indicated below:*

EDISON GENERAL ELECTRIC Co.,  
Harrison, N. J.

You are hereby notified that this company is now holding the following cars subject to your orders or disposition, and which cannot be placed because of conditions attributable to you. These cars are subject to demurrage charges as provided in published tariffs and will be charged to you as construc- tively placed at the time this notice is given you.

CAR.	ORIGINAL CAR.	Point of	
Number. Initial.	Number. Initial.	Shipment.	Contents.
853159 P. L.		Wason, Ohio	Machinery

**30**

....., Agent.

Copy of this notice acknowledged by  
Edison General Electric Co. { Consignor or }  
Lamp Works { Consignee } per Bell.

**40**

Exhibit D-1.

(If consignor or consignee refuses to acknowledge receipt of this Notice as provided above, the person delivering same should fill out date and sign the following certificate on the copy kept on file by the Agent:)

I hereby certify that copy of this Notice was delivered by me to Mr. Bell, representing the consignor or consignee named hereon, at 9 A. M. on 8/30/16.

10

W. R. KAIN.

(Signature of person delivering notice.)

(If this notice cannot be delivered personally by the Agent or his representative, it must be served by mail, and the Agent should fill out date and sign the following certificate on the copy kept on file by the Agent:)

I hereby certify that copy of this Notice was mailed by me to the shipper or consignee named hereon, at ... M. on ....., 191... .., Agent.

20

30

40

**Exhibit D-2.**

U. L. 39.

Coal, Coke and Iron Ore Must Not be Way-Billed Union Line.

**UNION LINE**

The Through Freight Line of the

PENNSYLVANIA SYSTEM

Commodity No. 8462 Local or Foreign Local

Date: Aug. 24, 1916. No.: F131

Initials: P. L. Car No.: 853,159

Mail Gond.  
Carded to Buffalo TRF N Y  
Rated Desk No. 8.

From 578 Wason St., Ohio.				To Harrison, N. J.					
Route to destination of Way-Bill. Show each Junction and Carrier in Route order.				Via				Ravenna Niles New Castle Oil City Olean, N. Y. Buffalo Trf N Y Niles Br. P Y & A Div. E & P Div. D L & W	
Weighed at	Gross	Tare	Allowance	Net	Length of Car	Marked Capacity of Car	Stenciled Weight of Car	Weight of Car and Contents	Transferred at
						Lbs.	Lbs.	Tons	Station
							Stop this Car at		Date
							For		To
									Car
Instructions Regarding Icing, Non-Icing, Ventilation, Etc.									

Name of Shipper, Point of Shipment, Original Car, Connecting Carrier and Previous Way-Bill Reference.	Consignee, Destination, Marks and Routing Beyond Destination of Way-Bill.	No. of Packages, Articles and Classification Conditions.	Weight.	*Rate and Tariff No.	Freight Charges.
1027 Strong Carlisle & Hammond Co.	Edison Lamp Works Harrison, N. J. Via D L & W	1 Special Smelting Fee. on skids 1 pc Pipe attached to skids 1 Cover on skids	10280	I. C. C. 13 37.3	38.34

NOTE.—The Agent making the way-bill will be held responsible for the correctness of the rates used. The Agent at billing destination must verify all calculations, and, when furnished with the necessary tariff information, must also verify the rates before making delivery.

I certify that the rates used on this way-bill are correct and in accordance with the published tariffs.  
W. H. LUTTON—G, Agent.

Junction Agents Must Stamp Below the Names of their Stations and Date Received from Connecting Carrier:					Revenue					
1st Junction	2nd Junction	3rd Junction	4th Junction	5th Junction	Roads	Per Cent.	Divisions			
D. L. & W. R. R. Co., East Buffalo, N. Y. PASSING SHEET 824.					Total,					
								Date .....	Agent at Destination will Stamp Herein the Date.	
								Train No. ....	D. L. & W. R. R. Co. Received Aug. 29, 1916. Freight Office. East Buffalo, N. Y.	
								Conductor.	The Way-Bill was received at his Station.	
								To be filed in by the last Conductor.		

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1897

1898

1899

1900

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1906

1907

1908

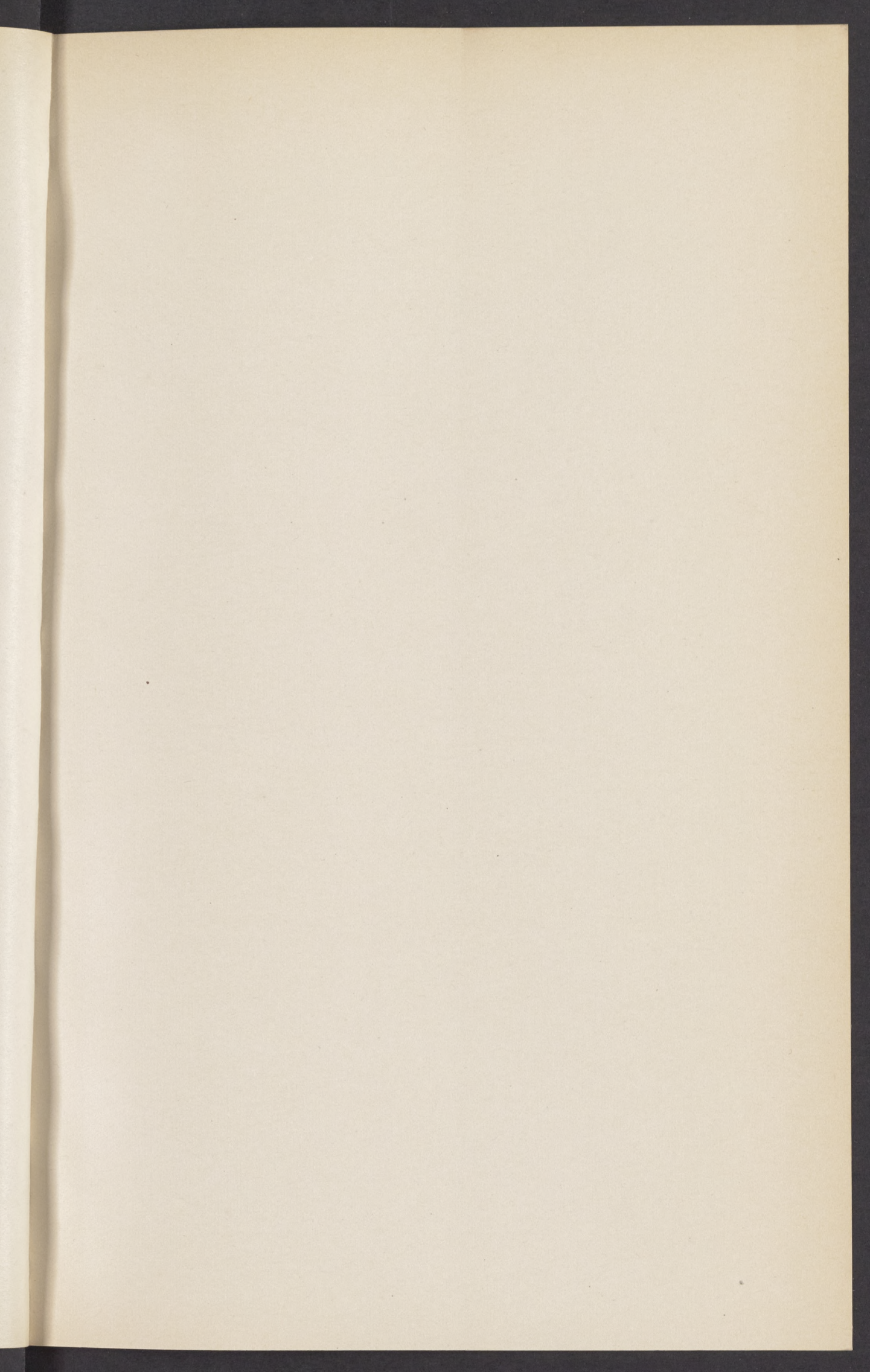
1909

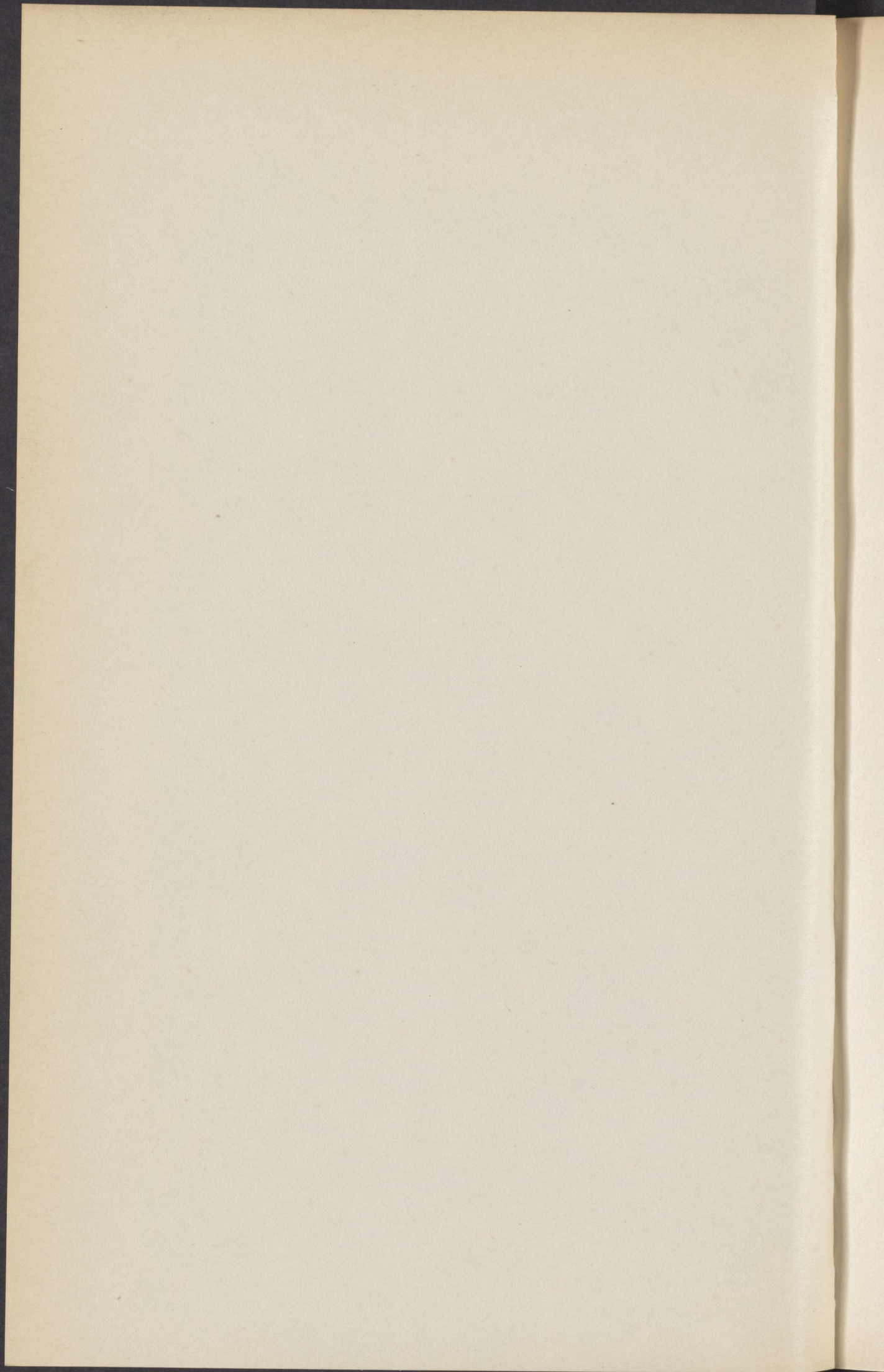
1910

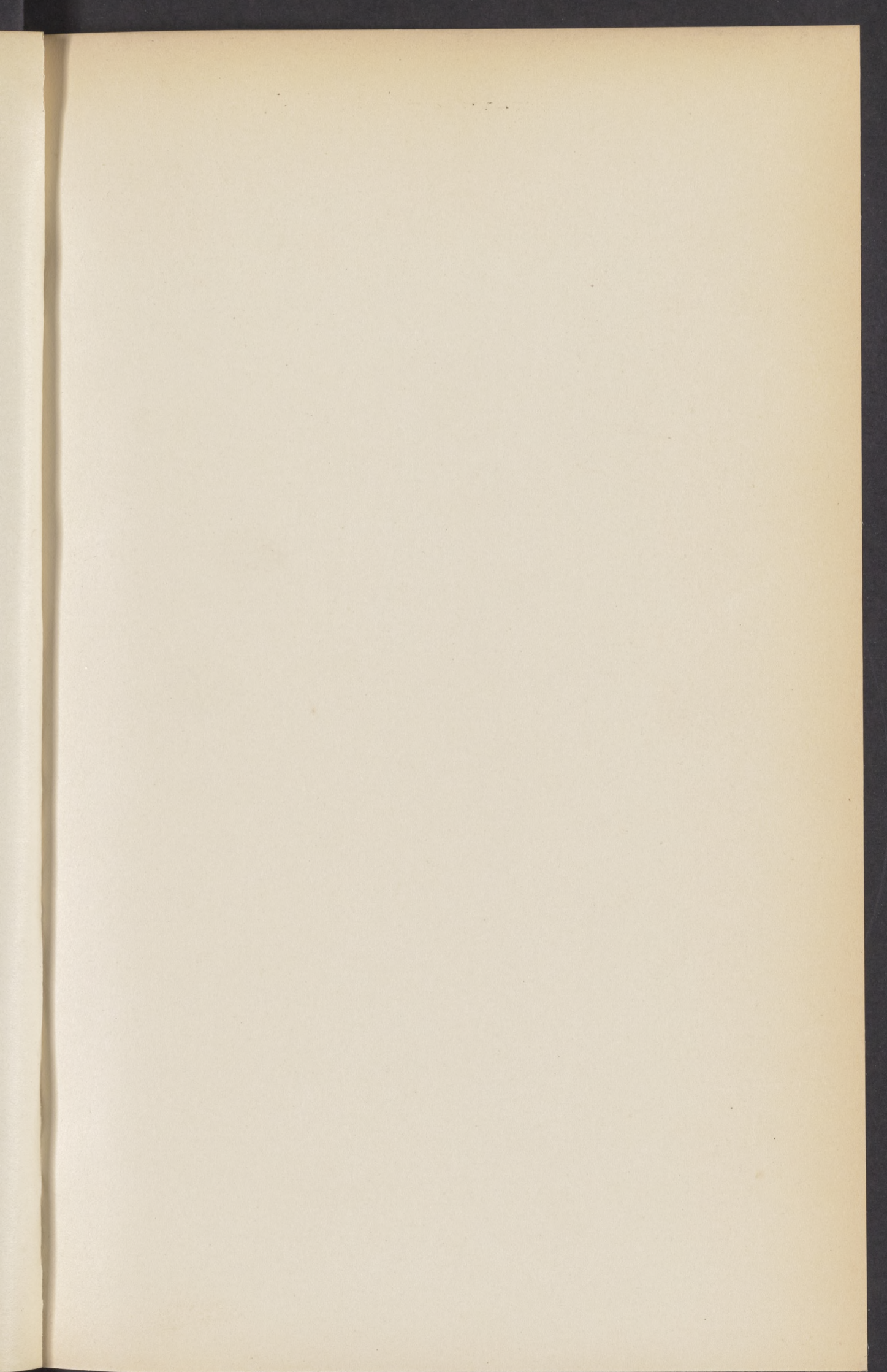
1911

1912

1913







100  
**Exhibit D-3:**



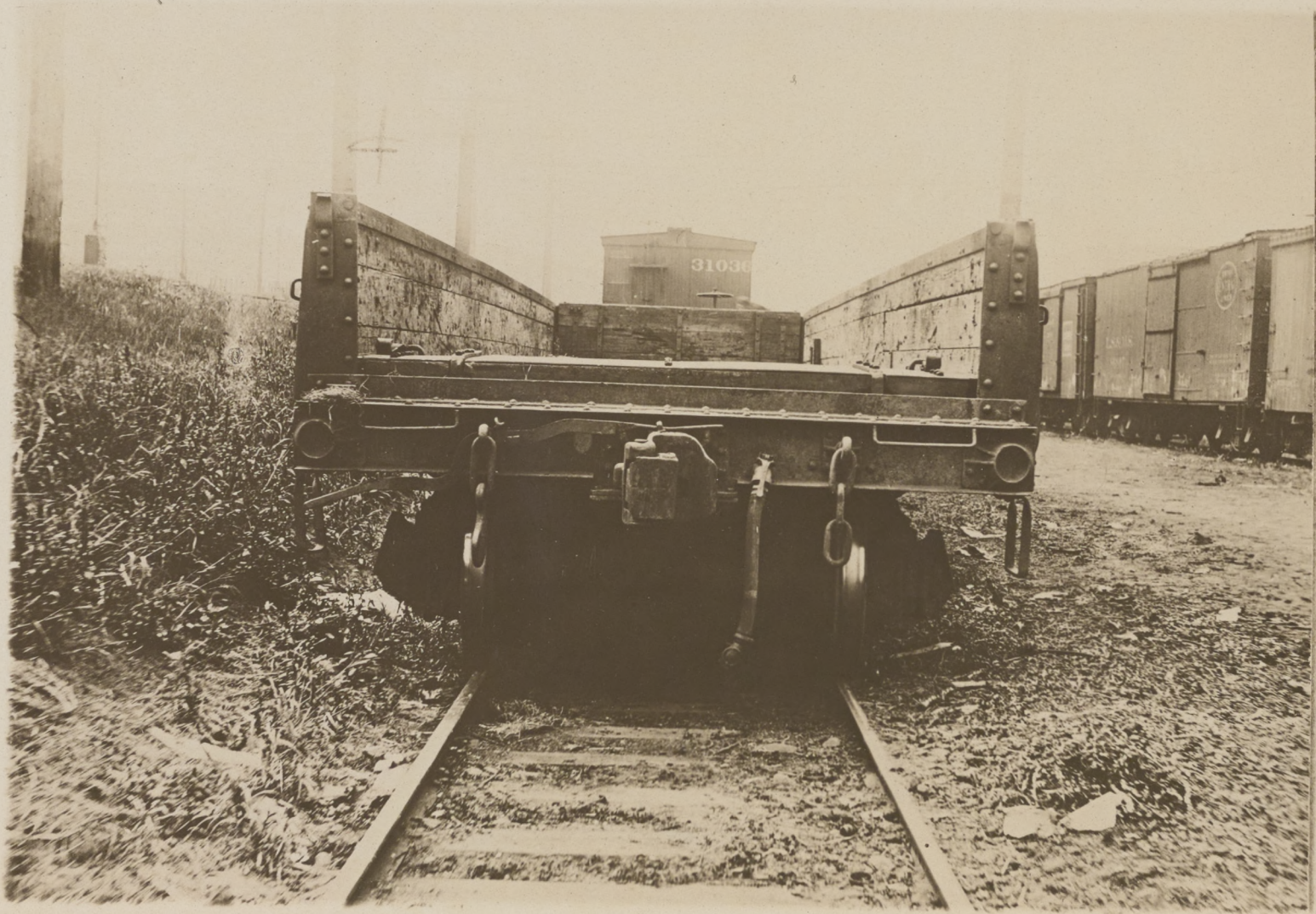
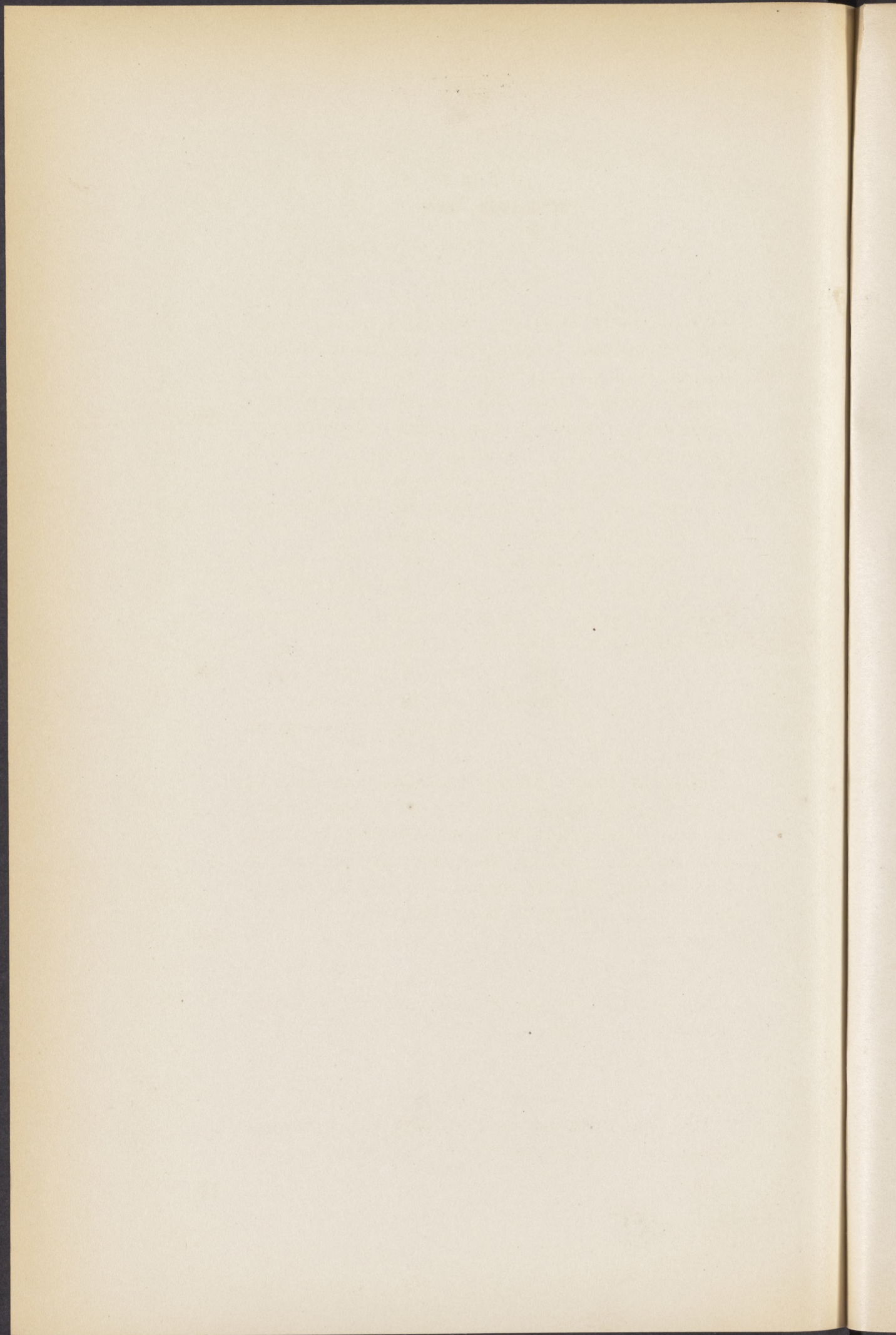


Exhibit D-4.



**Exhibit D-5.**

## INTERSTATE COMMERCE COMMISSION

Washington

I, George B. McGinty, Secretary of the Interstate Commerce Commission, do hereby certify that the paper hereto attached contains true and correct extracts from the schedule therein more particularly described, said schedule having been filed with the said Interstate Commerce Commission on date specified in said paper, and the said extracts therefrom having been in force throughout the period January 1, 1916 to January 31, 1917, both dates inclusive. **10**

IN WITNESS WHEREOF I have hereunto set my hand and affixed the Seal of said Commission this 10th day of September, A. D. 1917.

GEORGE B. MCGINTY, **20**  
Secretary of the Interstate  
Commerce Commission.

(Seal)

Extracts from Official Classification No. 43, R. N. Collyer, Agent, I. C. C.—O. C. No. 43, said schedule having been filed on November 15, 1915, and the said extracts therefrom having been in force throughout the period January 1, 1916 to January 31, 1917, both dates inclusive.

*Title Page.* **30**

\* \* \* \* \*

Applies on Freight Traffic covered by tariffs issued subject thereto.

\* \* \* \* \*

*Page i.*

This Classification is filed with the Interstate Commerce Commission by me, as Agent for the

Exhibit D-5.

following carriers, under Powers of Attorney as indicated below :

\* \* \* \* \*

Delaware, Lackawanna & Western R. R.

FX1—No. 19

\* \* \* \* \*

Page 26.

10

Rule 8-B.

Section 1. Owners are required to load and unload all freight carried at carload ratings.

Section 2 Owners are required to load and unload heavy or bulky freight carried at L. C. I. ratings that cannot be handled by the regular station employees, or at stations where the carrier's loading or unloading facilities are not sufficient for handling.

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